Supreme Court, U.S.
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No. 00-1307

In the Supreme Court of the United States

LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY, PETITIONER

v.

SIGMON COAL COMPANY, INC., AND JERICOL MINING, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: FEB. 13, 2001
CERTIORARI GRANTED: APR. 23, 2001

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NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages in the printed appendix to the petition for a writ of certiorari:

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District Court Opinion (Nov. 18, 1998) 65a
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Court of Appeals Opinion (Aug. 29, 2000) 1a
Court of Appeals Order Denying Rehearing and Rehearing En Banc (Nov. 15, 2000) 81a

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
(BIG STONE GAP)

No. 96-CV-148

DOCKET ENTRIES

DATE	DOCKET NUMBER	DOCKET ENTRIES
6/25/96	1	COMPLAINT Filing Fee $ 120.00 Receipt # 78733 Service due 10/23/96 for Commissioner, SS (lh) [Entry date 06/28/96]
10/27/97	19	MOTION for Summary Judgment by Sigmon Coal Company, Jericol Mining, Inc. (1b)
7/9/98	31	ORDER granting [30-1] motion for Leave to File a supplemental complaint (signed by Senior Judge Glen M. Williams) (lh) [Entry date 07/10/98]
7/9/98	32	AMENDED (SUPPLEMENTAL) COMPLAINT by Sigmon Coal Company, Jericol Mining, Inc. amending [1-1] complaint (lh) [Entry date 07/10/98]

DATE	DOCKET NUMBER	DOCKET ENTRIES
11/18/98	34	MEMORANDUM OPINION (signed by Senior Judge Glen M. Williams) (lb)
11/18/98	35	ORDER granting pltf's [19-1] motion for Summary Judgment, and denying dft's motion for summary judgment; dft ordered to Withdraw the assignments challenged by pltf Jericol in this case and notify Trustees of the UMWA Combined Benefit Fund that such assignments have been withdrawn. Dft enjoined from assigning additional retirees of Shackleford Coal Company, Inc. to pltf Jericol on basis that pltf is a related person to Shackleford Coal Company, Inc. (signed by Senior Judge Glen M. Williams) (lb)
11/18/98	--	Case closed (lb)

DATE	DOCKET NUMBER	DOCKET ENTRIES
12/3/98	36	MOTION for Reconsideration of [35-1] order dft ordered to Withdraw the assignments challenged by pltf Jericol in this case and notify Trustees of the UMWA Combined Benefit Fund that such assignments have been withdrawn. Dft enjoined from assigning additional retirees of Shackleford Coal Company, Inc. to pltf Jericol on basis that pltf is a related person to Shackleford Coal Company, Inc. by Commissioner, SS (lb) [Entry date 12/08/98]
12/18/98	39	ORDER denying [36-1] motion for Reconsideration of [35-1] order dft ordered to Withdraw the assignments challenged by pltf Jericol in this case and notify Trustees of the UMWA Combined Benefit Fund that such assignments have been withdrawn. Dft enjoined from assigning additional retirees of Shackleford Coal Company, Inc.

DATE	DOCKET NUMBER	DOCKET ENTRIES
		to pltf Jericol on basis that pltf is a related person to Shackleford Coal Company, Inc. (signed by Senior Judge Glen M. Williams) (lh) [Entry date 12/21/98]
1/6/99	40	MOTION to Stay portion of 12/21/98 order requiring dft to withdraw assignments challenged by Jerricol [*sic*] and notify Trustee of UMWA and Jericol w/10 days that such assignments have been withdrawn by Commissioner, SS (lb) [Entry date 01/08/99]
1/21/99	42	ORDER granting [40-1] motion to Stay portion of 12/21/98 order requiring dft to withdraw assignments challenged by Jerricol [*sic*] and notify Trustee of UMWA and Jericol w/10 days that such assignments have been withdrawn (signed by Senior Judge Glen M. Williams) (ls)
2/12/99	43	NOTICE OF APPEAL by Commissioner, SS. Order appealed: 12/18/98 Order by Judge Williams) (lmh)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Court of Appeals Docket #: 99-1219

[Filed: February 22, 1999]

GENERAL DOCKET ENTRIES

DATE	PROCEEDINGS
10/26/99	Oral argument heard. Courtroom Deputy: jph/cpg. [99-1219] (cpg)
8/29/00	Published, authored opinion filed. [99-1219] (db)
8/29/00	Judgment order filed. Decision: affirmed. EOD Date: 8/29/00. [99-1219] (db)
10/13/00	Petition filed by Appellant Apfel, Commissioner for rehearing. Number copies filed: 20 [3268741-1]., for rehearing en banc. Number of copies filed: 20 [3268741-2] [99-1219] (db)
10/16/00	Response/answer requested to motion for rehearing [3268741-1], motion for rehearing en banc [3268741-2] [99-1219] (db)

DATE	PROCEEDINGS
11/15/00	COURT ORDER filed denying motion for rehearing [3268741-1] EOD Date: 11/15/00., denying motion for rehearing en banc [3268741-2] EOD Date: 11/15/00. Copies to all counsel. [99-1219] (db)
11/27/00	Mandate issued. [99-1219] (db)
4/26/01	Supreme Court order received granting petition certiorari [3337752-1] on 04/23/01. [99-1219] (dhb)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Big Stone Gap Division

Civil Case No. 96-CV-148-B

SIGMON COAL COMPANY, INC. & JERICOL MINING, INC.,
PLAINTIFFS

v.

SHIRLEY S. CHATER
COMMISSIONER, SOCIAL SECURITY, ADMINISTRATION,
DEFENDANT

COMPLAINT

Plaintiffs, Sigmon Coal Company, Inc. and Jericol Mining, Inc., seek clarification of their obligations under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.* (the "Coal Act"), and request that this Court vacate certain beneficiary assignments the Commissioner of Social Security made to Plaintiffs pursuant to the Coal Act.

I. THE PARTIES

1. Plaintiff, Sigmon Coal Company, Inc. ("Sigmon"), is incorporated in the Commonwealth of Virginia and has its principal place of business in Keokee, Virginia. Sigmon currently conducts mining operations in Lee County, Virginia.

2. Plaintiff, Jericol Mining, Inc. ("Jericol"), is incorporated in Kentucky, and has its principal place of business in Harlan County, Kentucky.

3. Defendant, Shirley S. Chater, is the Commissioner of Social Security ("Commissioner"). The Social Security Administration ("SSA") administers and enforces various federal programs and performs other functions throughout the United States, including locations in the Commonwealth of Virginia within the jurisdiction of this Court. The Commissioner is responsible under the Coal Act for assigning beneficiaries in the United Mine Workers of America Combined Benefit Fund ("Combined Fund") to responsible operators. The Commissioner has delegated to various SSA Service Centers certain of her duties under the Act.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 2201, 26 U.S.C. §§ 9706(f) and 9721, and 5 U.S.C. §§ 701-706.

5. Venue is proper in this district under 28 U.S.C. § 1391(e) in that Plaintiff Sigmon resides in and is conducting business in this judicial district.

III. THE COAL ACT

6. Section 9706 of the Coal Act requires the Commissioner to assign each Combined Fund beneficiary to a signatory coal operator ("assigned operator").

7. Section 9704 of the Act requires that assigned operators pay an annual per-beneficiary health and death benefit premium to the Combined Fund.

8. Section 9704(a) of the Act provides that any related person to an assigned operator shall be jointly and severally liable for any premium required to be paid by the assigned operator. Thus, with respect to obligations imposed by the Coal Act, a related person is the same as an assigned operator.

IV. BACKGROUND FACTS

9. By letters dated September 28 and October 7, 1993, the Commissioner assigned 20 Combined Fund beneficiaries to Jericol.

10. None of these beneficiaries ever worked for Jericol or for Sigmon. On information and belief, the signatory operator that actually employed these retired UMWA miners was Shackleford Coal Company, EIN 61-0606844 ("Shackleford"). On information and belief, SSA assigned these individuals ("the Shackleford retirees") to Jericol because the Commissioner decided that Jericol is a successor in interest to Shackleford within the meaning of Section 9701(c)(2)(A) of the Coal Act.

11. Pursuant to section 9706(f) of the Act, by letters dated June 9, 1994, Jericol requested the Commissioner to reconsider her decision that Jericol is a successor in interest to Shackleford.

12. By letters dated August 30 and September 8, 1994, the Commissioner rejected Jericol's request for reconsideration and informed the Company that her

assignment of the Shackleford retirees would not be withdrawn.

13. By letters dated June 30 and September 20, 1995 the Commissioner assigned 109 additional Shackleford retirees to Jericol. As with the initial assignments, these beneficiaries were assigned to Jericol on the basis that Jericol is a successor in interest to Shackleford.

14. In May 1996, the Combined Fund filed suit against Sigmon and Jericol in the United States District Court for the District of Columbia to collect premiums allegedly owed with respect to the Shackleford retirees. The Combined Fund alleged that Jericol and Sigmon are jointly and severally liable for the Shackleford retirees' premiums because they are "related persons" under the Coal Act.

V. CAUSES OF ACTION

First Count: Request for Declaratory Judgment

15. Paragraphs 1 through 14 above are incorporated by reference.

16. Section 9701(c)(2)(A) of the Coal Act provides that a successor in interest to a signatory operator is a "related person" to the signatory. The term "successor in interest" is not defined in the Coal Act.

17. The Coal Act is codified in the Internal Revenue Code ("IRC"). As a matter of law, the IRC definition of successor in interest is controlling for purposes of section 9701(c)(2)(A) of the Coal Act.

18. A "successor in interest" is defined at 26 C. F. R. § 1.1503-2(c)(12) as an acquiring corporation that succeeds to the tax attributes of the acquired corporation.

19. Jericol purchased certain Shackleford assets in 1973 for fair market value. However, Jericol did not accept or assume responsibility or liability for any person employed by Shackleford, and did not succeed to Shackleford's tax attributes. Sigmon has never had any connection to Shackleford.

20. Neither Sigmon nor Jericol is a successor in interest to Shackleford under the IRC, as amended by Section 9701(c)(2)(A) of the Coal Act. Therefore, neither Plaintiff is a related person to Shackleford.

21. The Commissioner's assignment of Shackleford's retirees to Plaintiffs must be vacated because it exceeds her authority under the Coal Act and is erroneous as a matter of law.

Second Count: Review of Agency Action

22. Paragraphs 1 through 21 are hereby incorporated by reference.

23. The Commissioner's September and October 1993 assignment of Shackleford's retirees to Jericol on the basis that Jericol is a successor in interest to Shackleford was erroneous.

24. The Commissioner's September 30 and August 8, 1995 rejection of Jericol's June 9, 1994 request for reconsideration of the 1993 assignments was arbitrary and capricious and must be reversed because it violates the Administrative Procedure Act.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. A declaration that neither Jericol nor Sigmon is a successor in interest to Shackleford within the meaning of 26 U.S.C. § 9701(c)(2)(A) .

2. An Order which directs the Commissioner to (i) withdraw the assignment of Shackleford's retirees to Jericol, and (ii) inform the Combined Fund that such assignments have been withdrawn.

3. An Order which enjoins the Commissioner from assigning any Shackleford retirees to Plaintiffs in the future.

4. Such other and further relief as this Court deems proper and just.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Big Stone Gap Division

Civil Case No. 96 CV148-B

SIGMON COAL COMPANY, INC. & JERICOL MINING, INC.,
PLAINTIFFS

v.

KENNETH S. APFEL, COMMISSIONER,
SOCIAL SECURITY ADMINISTRATION,
DEFENDANT

SUPPLEMENTAL COMPLAINT

Leave having been granted, Plaintiffs, Sigmon Coal Company, Inc. and Jericol Mining, Inc., file this Supplemental Complaint and show:

1. Paragraphs 1 through 24 of Plaintiffs' first Complaint, filed June 25, 1996, are hereby incorporated by reference.

2. Subsequent to the time when Plaintiffs' first Complaint was filed the U.S. Supreme Court issued its decision in *Eastern Enterprises v. Apfel*, No. 97-42 (U.S. June 25, 1998). The *Eastern* decision declared § 9706(a)(3) of the Coal Industry Retiree Health Benefits Act of 1992 ("Coal Act"), 26 U.S.C. §§ 9701-9722 unconstitutional as applied to Eastern (the assigned operator) in that case.

3. The Supreme Court found that § 9706(a)(3) was unconstitutional as applied to Eastern because it sought to impose liability on Eastern for miners Eastern employed long before 1974.

4. The assignments at issue in this case impose retroactive liability on Jericol under facts even more extreme than those present in *Eastern*, because the miners in question did not even work for Jericol.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following supplemental relief:

1. Paragraphs 1 through 4 of Plaintiffs' Prayer For Relief in the first Complaint, filed June 25, 1996, are hereby incorporated by reference.

2. A declaration that, based on the finding of the U.S. Supreme Court in *Eastern*, § 9706(a)(3) of the Coal Act is unconstitutional as applies to Jericol and Sigmon and the facts of the instant case.

3. Such other and further relief as this Court deems proper and just.

Respectfully submitted,

JOHN R. WOODRUM

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COUNSEL FOR PLAINTIFFS

July 2, 1998

CONSENT OF STOCKHOLDERS OF SHACKLEFORD COAL COMPANY, INC.

The undersigned, being the owners of all of the outstanding capital stock of Shackleford Coal Company, Inc., a Kentucky corporation, with its principal office and place of business at Crummies, Harlan County, Kentucky, do hereby consent to the following actions on behalf of the corporation and of its officers, to-wit:

(1) For Shackleford Coal Company, Inc., to enter into that certain Plan and Agreement for Purchase of Assets, dated the 31st day of May, 1973, by and between Shackleford Coal Company, Irdell Mining, Inc., and The Dale Company, concerning the sale of the coal mining operation and the coal leases of Shackleford Coal Company, Inc., to Irdell Mining, Inc., and to The Dale Company, and hereby consent for its approval by the Board of Directors, and the authorization of the Board of Directors; for the President and Secretary of the Corporation to execute said Plan and Agreement for Purchase of Assets on behalf of Shackleford Coal Company, Inc., and to execute all documents necessary to carry out the obligations of Shackleford Coal Company, Inc., under said agreement.

(2) To permit Irdell Mining, Inc., to use the name of Shackleford Coal Company or Shackleford Coal Company, Inc., and for the President and Secretary of Shackleford Coal Company, Inc., to sign and deliver to Irdell Mining, Inc., consent authorizing such use.

(3) To the amendment of Article I of the Articles of Incorporation of Shackleford Coal Company, Inc., so as to change the name of the corporation from Shackleford Coal Company, Inc., to Kelley & Associates, Inc.

WITNESS OUR HANDS as of the 30th day of May, 1973.

HENRY SHACKLEFORD ESTATE

By RAYMOND COLE
RAYMOND COLE
Co-Executor

BYRD SHACKLEFORD
Co-Executor

SAM SHACKLEFORD
Co-Executor

BYRD SHACKLEFORD
BYRD SHACKLEFORD
Co-Executor

SAM SHACKLEFORD
SAM SHACKLEFORD

JAMES E. KELLEY
JAMES E. KELLEY

REBA KATHRYN COLE
REBA KATHRYN COLE

EVLA SHACKLEFORD
EVLA SHACKLEFORD

BILL OF SALE

For value received, Shackleford Coal Company hereby transfers and sells to Irdell Mining, Inc. all rights, title and interest in and to the following assets owned by it:

(1) The leasehold improvements, machinery and equipment, trucks and automobiles and office equipment listed and described on Exhibit A attached hereto;

(2) The entire inventory of coal of Shackleford Coal Company as of the close of business on May 31, 1973; and

(3) All supplies of Shackleford Coal Company as of the close of business on May 31, 1973.

Dated this 1st day of June, 1973.

Attest: SHACKLEFORD COAL COMPANY

JAMES E. KELLEY
Secretary

By BYRD L. SHACKLEFORD
President

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF HARLAN)

I, the undersigned, a Notary Public in and for the County and State above written, do hereby certify that the foregoing Bill of Sale was this day signed and acknowledged before me by the President and Secretary of Shackleford Coal Company as being executed by them for and on behalf of said corporation.

In Testimony Whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

RAYMOND COLE
My Comm. Expires 9-10-76
Notary Public

Receipt of this Bill of Sale from Shackleford Coal Company by Irdell Mining, Inc. is hereby acknowledged this 1st day of June, 1973.

IRDELL MINING, INC.

By JAMES A. SIGMON
President

PLAN AND AGREEMENT FOR PURCHASE OF ASSETS

THIS PLAN AND AGREEMENT FOR PURCHASE OF ASSETS (hereinafter referred to as "this Agreement") is entered into this 31st day of May, 1973, by and between SHACKLEFORD COAL COMPANY (hereinafter referred to as "Shackleford"), IRDELL MINING, INC. (hereinafter referred to as "Irdell") and THE DALE COMPANY (hereinafter referred to as "Dale");

WITNESSETH:

WHEREAS, the officers and Board of Directors of Shackleford have determined that it is desirable that Shackleford sell certain assets owned by it to Irdell and Dale upon the terms and conditions herein set forth; and

WHEREAS, the officers and Board of Directors of Irdell and the partners of Dale have determined that it is desirable that they purchase these assets of Shackleford upon the terms and conditions herein set forth;

NOW, THEREFORE, in order to consummate the transactions set forth herein and in consideration of the mutual covenants, agreements, representations and warranties hereinafter contained, the parties hereto agree as follows:

ARTICLE I

THE PARTIES TO THIS AGREEMENT

Section 1.01. Shackleford. Shackleford is a Kentucky corporation engaged in the business of mining, processing and selling coal.

Section 1.02. Irdell. Irdell is a corporation organized under the laws of the Commonwealth of Kentucky. It is authorized to engage in the business of mining, processing and selling coal.

Section 1.03. Dale. Dale is a Kentucky partnership organized for the purpose of acquiring leases of coal properties and subleasing such properties to companies engaged in the coal mining business.

ARTICLE II

SALE AND TRANSFER OF ASSETS

Section 2.01. Sale of Operating Assets by Shackleford.

(A) At the closing, Shackleford shall sell, convey, grant, assign, transfer and deliver to Irdell and Irdell shall purchase, accept and receive from Shackleford all leasehold improvements, machinery and equipment, trucks and automobiles and office equipment, all as listed and described on Exhibit A attached hereto and used or held by it for use in the production and mining of coal.

(B) The purchase price for the assets set forth on Exhibit A attached hereto shall be the book value

thereof as of the date of closing. This amount shall be paid in cash by Irdell to Shackleford at the closing.

Section 2.02. Sale of Coal Inventory by Shackleford.

(A) At the closing, Shackleford shall sell, convey, grant, assign, transfer and deliver to Irdell and Irdell shall purchase, accept and receive from Shackleford the coal inventory of Shackleford (exclusive of any coal already loaded in railroad cars) as of the date of closing.

(B) The purchase price for this coal inventory shall be such amount as is determined by multiplying the coal inventory at the date of closing by $7.50 per ton. This amount shall be paid in cash by Irdell to Shackleford at the closing.

Section 2.03. Sale of Supplies by Shackleford.

(A) At the closing, Shackleford shall sell, convey, grant, assign, transfer and deliver to Irdell and Irdell shall purchase, accept and receive from Shackleford all supplies of Shackleford as of the date of closing.

(B) The purchase price for such supplies shall be the cost thereof to Shackleford as of the date of closing. This amount shall be paid in cash by Irdell to Shackleford at the closing.

Section 2.04. Transfer of Leases, Contracts and Commitments.

(A) At the closing, Shackleford shall transfer to Irdell all its rights under the leases set forth on Exhibit B attached hereto, plus any additional leases entered into by it between the date hereof and the date of closing in the ordinary course of business or as to which

Irdell has consented in writing. Irdell shall correspondingly assume all the obligations and responsibilities of Shackleford under such leases.

(B) At the closing, Shackleford shall likewise transfer to Irdell all its rights under the contracts and commitments (including its employee reserve account and rate for Kentucky Unemployment Insurance purposes) set forth on Exhibit C attached hereto, plus any additional contracts and commitments entered into by it between the date hereof and the date of closing in the ordinary course of business or as to which Irdell has consented in writing. Irdell shall correspondingly assume all the obligations and responsibilities of Shackleford under such contracts and commitments.

Section 2.05. Sale of Leases and Subleases by Shackleford.

(A) At the closing, Shackleford shall sell, convey, grant, assign, transfer and deliver to Dale and Dale shall purchase, accept and receive from Shackleford all its right, title and interest in and to the leases and subleases set forth on Exhibit D attached hereto. At the closing, Dale shall assume all the obligations and responsibilities of Shackleford under these leases and subleases and shall agree to indemnify and hold Shackleford harmless in connection with any liability in connection therewith.

(B) The purchase price for the leases and subleases set forth on Exhibit D attached hereto shall be Three Million Five Thousand Six Hundred Eighty-Three Dollars ($3,005,683.00), less the amount of Thirty Thousand Dollars ($30,000.00) per month from January 1, 1973 to the date of closing and also less the amounts

received by Shackleford under the provisions of Subparagraph (B) of Section 2.01, Subparagraph (B) of Section 2.02 and Subparagraph (B) of Section 2.03. This amount shall be paid in cash by Dale to Shackleford at the closing.

Section 2.06. Capital Expenditures by Shackleford. It is recognized by the parties hereto that, between January 1, 1973 and the closing, Shackleford may be required to make various capital expenditures. As to any such capital expenditures which are approved in writing by Irdell, Shackleford shall be entitled to reimbursement for its cost of all such assets by Irdell at the closing (other than the purchase of equipment from Glenbrook Equipment Company) and ownership of all such capital assets (including the equipment acquired by Shackleford from Glenbrook Equipment Company) shall be transferred by Shackleford to Irdell at the closing.

Section 2.07. Proration of Expenses. As to any expenses paid by Shackleford, a portion of which is attributable to the operation of Irdell or Dale and inures to their benefit, the cost thereof shall be prorated as of the date of closing. As to any expenses paid by Irdell or Dale and attributable to operations of Shackleford and inured to its benefit, the cost thereof shall be prorated as of the date of closing.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SHACKLEFORD

Shackleford jointly and severally represents, warrants and covenants as follows:

Section 3.01. Organization and Standing. Shackleford is duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky. It has full power and lawful authority to carry on the business of mining, processing and selling coal, in which it is now engaged. Shackleford has full power and authority to execute and carry out the terms of this Agreement.

Section 3.02. Approval of Plan. The Board of Directors of Shackleford has approved this Agreement and has called a special meeting of its shareholders to be held on May 30, 1973, for the purpose of adopting this Agreement in accordance with the governing instruments of Shackleford and the laws of the Commonwealth of Kentucky.

Section 3.03. Title to Properties. Shackleford has good and marketable title to all of the personal property and assets reflected on Exhibit A attached hereto. There will be no liens or encumbrances (whether by mortgage, pledge, lien, conditional sales contract or otherwise) against such properties and assets on the date of closing.

Section 3.04. Leases.

(A) Exhibit D attached hereto lists all the leases and subleases pursuant to which real property located in Harlan County, Kentucky, is held under lease by Shackleford. All of these leases and subleases are valid and subsisting and in full force and effect. Shackleford is not in default under any of these leases or subleases.

(B) The leases and subleases set forth on Exhibit D cover 3,166 acres of property, more or less, in Harlan County, Kentucky, and permit the mining to exhaustion of the coal in the seams shown on Exhibit D underlying the properties covered by these various leases and subleases.

(C) Exhibit B attached hereto lists all the leases pursuant to which personal property is held under lease by Shackleford. All of these leases are valid and subsisting and in full force and effect. Shackleford is not in default under any of these leases.

Section 3.05. Contracts and Commitments. Exhibit C attached hereto lists all the contracts, agreements and commitments to which Shackleford is a party. All of these contracts, agreements and commitments are valid and subsisting and in full force and effect. Shackleford is not in default under any of these contracts, agreements or commitments.

Section 3.06. Labor Contract. Shackleford has a union contract with the United Mine Workers. A copy of this union contract is attached hereto as Exhibit E. This contract is valid and subsisting and in full force and effect. Shackleford is not in default under this union contract.

Section 3.07 Salaries. Exhibit F attached hereto lists the names, positions and current salary rates of all non-union officers and other employees of Shackleford. Exhibit F also sets forth the bonus, additional compensation and other like benefit arrangements which Shackleford has with any such officers and employees.

Section 3.08. Employee Benefit Plans. Except as set forth on Exhibit G hereto and under its United Mine Workers labor contract, Shackleford does not have any pension, profit-sharing, retirement, insurance, incentive, deferred compensation, bonus or other employee benefit plans.

Section 3.09. Litigation. Except as set forth on Exhibit H hereto, there is no litigation, investigation or proceeding pending or threatened involving Shackleford.

Section 3.10. Insurance. Shackleford has and, upon the date of closing, will continue to have in effect the insurance coverage set forth on Exhibit I attached hereto. This insurance protection is adequate in amounts, types and risks insured against in accordance with normal trade practices in similar businesses.

Section 3.11. Financial Statements. Attached hereto as Exhibit J is an unaudited management balance sheet of Shackleford as of September 30, 1972 and an unaudited management statement of income for the year ended September 30, 1972. Attached hereto as Exhibit K is an unaudited management balance sheet of Shackleford as of December 31, 1972 and an unaudited management statement of income for the three-month period ended December 31, 1972. Such balance sheets and the statements of income have been prepared in

substantial conformity with generally accepted accounting principles applied on a consistent basis. Such balance sheets and the statements of income fairly present the financial position of Shackleford at September 30, 1972 and December 31, 1972 and the results of its operations for the periods then ending.

Section 3.12. Absence of Changes.

(A) Except as specifically set forth on Exhibit L attached hereto, there have been and will be no material changes in the financial condition, assets, liabilities or business of Shackleford from September 30, 1972 to the date of closing, other than changes in the ordinary course of business, none of which have been or will be materially adverse.

(B) Since September 30, 1972, Shackleford has not entered into any transaction or incurred any liabilities not in the ordinary course of business.

Section 3.13. Compliance with Laws. Shackleford is in substantial compliance with all applicable laws, regulations and administrative orders of the United States, the Commonwealth of Kentucky and every subdivision of the Commonwealth of Kentucky to which it is subject and, on the date of closing, will be in compliance with all such laws (but exclusive of any Bulk Sales Act or similar statute).

Section 3.14. Execution and Performance of Agreement. The execution and performance of the terms of this Agreement and the transactions contemplated thereby by Shackleford will not violate the provisions of any law, contract, agreement or instrument by which Shackleford is bound.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF IRDELL

Irdell represents, warrants and covenants as follows:

Section 4.01. Organization and Standing. Irdell is duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky. It has full power and lawful authority to carry on the business of mining, processing and selling coal. Irdell has full power and authority to execute and carry out the terms of this Agreement.

Section 4.02. Approval of this Agreement. The Board of Directors of Irdell has approved this Agreement.

Section 4.03. Execution and Performance of Agreement. The execution and performance of the terms of this Agreement and the transactions contemplated thereby by Irdell will not violate any provision of any law (including the applicable laws of the Commonwealth of Kentucky), contract, agreement or instrument by which Irdell is bound.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF DALE

Dale represents, warrants and covenants as follows:

Section 5.01. Organization and Standing. Dale is a duly organized and validly existing Kentucky partnership. It has full power and lawful authority to acquire leases of coal property and sublease such prop-

erties to companies engaged in the coal mining business.

Section 5.02. Approval of this Agreement. The partners of Dale have approved the execution of this agreement.

Section 5.03. Execution and Performance of Agreement. The execution and performance of the terms of this Agreement and the transactions contemplated thereby by Dale will not violate any provisions of any law (including the applicable laws of the Commonwealth of Kentucky), contract, agreement or instrument by which Dale is bound.

ARTICLE VI

CONDUCT OF BUSINESS PENDING CLOSING

Section 6.01. Conduct of Business of Shackleford. Except as otherwise agreed to in writing by Irdell and Dale, Shackleford covenants and agrees that, from the date hereof to the date of closing:

(A) The business of Shackleford will be conducted in the usual manner in which it has been conducted;

(B) No increases will be made in the compensation payable by Shackleford to any of its employees;

(C) No contract or other commitment will be entered into by or on behalf of Shackleford, except any contract or commitment entered into in the ordinary course of business and involving less than Ten Thousand Dollars (10,000.00);

(D) No sale, transfer or other disposition and no mortgage, pledge or other encumbrance of any asset will be made or entered into by or on behalf of Shackleford; and

(E) Shackleford will use its best efforts to preserve its business and keep its business organization intact; attempt to keep available to Shackleford the services of its present employees and agents; and preserve for Shackleford the goodwill of its customers, suppliers and others having business relations with it.

Section 6.02. Access and Information. Shackleford will cause Irdell and Dale, their counsel, accountants and other representatives, to have full access, during normal business hours, throughout the period prior to the date of closing, to all the books, leases, contracts, commitments, minutes and records of Shackleford and shall cause to be furnished to Irdell and Dale and their representatives during such period all such information concerning the affairs of Shackleford as Irdell and Dale and their representatives may reasonably request.

ARTICLE VII

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF IRDELL AND DALE

All obligations of Irdell and Dale under this Agreement shall be subject to the fulfillment, prior to the date of closing, of each of the following conditions, except to the extent any such conditions are expressly waived in writing by Irdell and Dale prior to the date of closing:

Section 7.01. Accuracy of Representations and Warranties. All of the representations and warranties made by Shackleford shall be true as of the date of this Agreement and shall likewise be true in all material respects as of the date of closing. Shackleford shall also have furnished to Irdell and Dale a duly authorized certificate signed on its behalf by its President and Secretary and dated as of the date preceding the date of closing which shall certify to the truth of all such representations and warranties.

Section 7.02. Opinion of Counsel. Shackleford shall have furnished to Irdell and Dale an opinion or opinions of Messrs. Greene & Forester, Harlan, Kentucky, counsel for Shackleford, in form and substance satisfactory to Irdell and Dale, dated as of the date preceding the date of closing, to the effect that:

(A) Shackleford is duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky; has corporate powers sufficient to carry on its business as presently conducted; and has

corporate power to enter into and carry out the terms of this Agreement;

(B) The execution, delivery and performance of the terms of this Agreement by Shackleford have been authorized and approved by all requisite action of its Board of Directors; this Agreement has been duly adopted by the stockholders of Shackleford; this Agreement has been duly executed and delivered by Shackleford; and, assuming proper execution and delivery by Irdell and Dale, this Agreement constitutes a valid and binding obligation of Shackleford in accordance with its terms;

(C) This Agreement complies with the requirements of the laws of the Commonwealth of Kentucky for the sale of the assets covered by this Agreement (but not including any Bulk Sales Act or similar statute);

(D) That, upon the sale becoming effective, the property and assets of Shackleford covered by this Agreement will become the property of Irdell or Dale as provided for herein;

(E) There are no liens or encumbrances of record upon any real or personal property of Shackleford; and

(F) Counsel does not know of any material litigation, proceeding or governmental investigation pending or threatened against or relating to Shackleford, its properties, its business or the transactions contemplated by this Agreement or of any contract, agreement or instrument by which Shackleford is bound which would be violated by the execution and performance of this Agreement.

Section 7.03. Additional Documents. Shackleford shall have furnished Irdell and Dale with the following:

(A) The Employment Agreements attached hereto as Exhibits M, N, O, P and Q, signed respectively by Raymond E. Cole, James E. Kelley, Sam A. Shackleford, Douglas B. Shackleford and Thomas Shackleford;

(B) The Agreement Not to Compete attached hereto as Exhibit R signed by Byrd L. Shackleford;

(C) A title opinion of Messrs. Green & Forester, Harlan, Kentucky, counsel for Shackleford, or other counsel acceptable to Dale, covering the coal leases owned by Shackleford sufficient to enable Dale to obtain title insurance covering such leases at customary premium rates;

(D) A properly executed Consent for Irdell to use the corporate name "Shackleford Coal Company" and a properly executed Amendment to the Articles of Incorporation of Shackleford changing its corporate name to Kelley & Associates, Inc.;

(E) A certified copy of resolutions duly adopted by the Board of Directors of Shackleford approving this Agreement, authorizing its execution and delivery and approving the transactions contemplated hereby;

(F) A certified copy of resolutions duly adopted by the holders of all the outstanding stock of Shackleford adopting this Agreement; and

(G) Such other documents as may be reasonably required by Irdell and Dale and their counsel to perfect the consummation of the transactions hereunder duly executed by Shackleford.

ARTICLE VIII

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SHACKLEFORD

All obligations of Shackleford under this Agreement shall be subject to the fulfillment, prior to the date of closing, of each of the following conditions, except to the extent any such conditions are expressly waived in writing by Shackleford prior to the date of closing:

Section 8.01. Accuracy of Representations and Warranties. All of the representations and warranties made by Irdell and Dale shall be true as of the date of this Agreement and shall likewise be true in all material respects as of the date of closing. Irdell and Dale shall also have furnished to Shackleford a duly authorized certificate signed, on behalf of the corporation, by the President of Irdell and dated as of the date preceding the date of closing and Dale shall have furnished to Shackleford a duly authorized certificate signed, on behalf of the partnership, by a General Partner of Dale and dated as of the date preceding the date of closing, both of which shall certify to the truth of all such representations and warranties.

Section 8.02. Opinion of Counsel. Irdell shall have furnished to Shackleford an opinion or opinions of Messrs. Dinsmore, Shohl, Coates & Deupree, Cincinnati, Ohio, counsel for Irdell, or other counsel acceptable to Shackleford, in form and substance satisfactory to Shackleford, dated as of the date preceding the date of closing, to the effect that:

(A) Irdell is duly organized, validly existing and in good standing under the laws of the Commonwealth of

Kentucky and has corporate powers sufficient to carry on its business as presently conducted;

(B) The execution, delivery and performance of the terms of this Agreement by Irdell have been authorized and approved by all requisite action of the Board of Directors of Irdell; and, assuming proper execution and delivery by Shackleford, this Agreement constitutes a valid and binding obligation of Irdell in accordance with its terms; and

(C) Irdell has complied with any requirements of the laws of the Commonwealth of Kentucky for the acquisition by it of the assets of Shackleford covered by this Agreement and the performance of the provisions of this Agreement will not violate any laws of the Commonwealth of Kentucky.

Section 8.03. Opinion of Counsel. Dale shall have furnished to Shackleford an opinion or opinions of Messrs. Dinsmore, Shohl, Coates & Deupree, Cincinnati, Ohio, counsel for Dale, or other counsel acceptable to Shackleford, in form and substance satisfactory to Shackleford, dated as of the date preceding the date of closing, to the effect that:

(A) Dale is a duly organized and validly existing Kentucky partnership and has power sufficient to carry on its business of leasing and subleasing coal properties;

(B) The execution, delivery and performance of the terms of this Agreement by Dale have been authorized and approved by all requisite action of the partners of Dale; and, assuming proper execution and delivery by Shackleford, this Agreement constitutes a valid and

binding obligation of Dale in accordance with its terms; and

(C) Dale has complied with any requirements of the laws of the Commonwealth of Kentucky for the acquisition by it of the assets of Shackleford covered by this Agreement and the performance of the provisions of this Agreement will not violate any laws of the Commonwealth of Kentucky.

Section 8.04. Additional Documents. Irdell and Dale shall have furnished Shackleford with the following:

(A) A certified copy of resolutions duly adopted by the Board of Directors of Irdell approving this Agreement, authorizing its execution and delivery and approving the transactions contemplated hereby;

(B) The Employment Agreements and Non-Compete Agreement attached hereto as Exhibits M, N, O, P, Q and R each signed by an officer of Irdell; and

(C) Such other documents as may be reasonably required by Shackleford and its counsel to perfect the consummation of the transactions hereunder duly executed by the appropriate officers of Irdell.

ARTICLE IX

ENFORCEMENT OF REPRESENTATIONS, WARRANTIES & AGREEMENTS

Section 9.01. Enforcement Against Shackleford. The representations, warranties and agreements made by Shackleford herein, except as they may be fully performed prior to or on the date of closing, shall survive the closing for a period of three years and shall be fully enforceable at law or in equity against Shackleford and its assigns, by Irdell and Dale and their successors and assigns.

Section 9.02. Right to Defend. If any claim should be made against the property or assets covered by this Agreement by any third party, Irdell or Dale agree to promptly notify Shackleford or its assigns of such claim. If Shackleford (or such assigns) desires to do so, it may either join in the defense of such case or it may assume the full responsibility for the defense of such case. Any such action by Shackleford or its assigns shall be at its cost and expense.

ARTICLE X

CLOSING

Section 10.01. Date. The closing hereunder shall take place at 11:00 A.M. on June 1, 1973, or as soon thereafter as is practicable but, in any event, not later than June 30, 1973, at the offices of Shackleford in Harlan, Kentucky, or at such other time or place as the parties hereto shall mutually agree upon in writing.

Section 10.02. Delivery of Documents at the Closing.

(A) At the closing, Shackleford shall deliver to Irdell such bills of sale, assignments and other documents of transfer as shall be necessary to transfer ownership of the properties described on Exhibit A attached hereto and the coal inventory and supplies of Shackleford of the date of closing. At the closing, Shackleford shall likewise deliver to Irdell such bills of sale, assignments and other documents of transfer as shall be necessary to transfer to Irdell all its rights under the leases, contracts and commitments set forth on Exhibits B and C attached hereto.

(B) At the closing, Irdell shall deliver to Shackleford the cash payments provided for in Sections 2.01, 2.02, 2.03, 2.04 and 2.06 of Article II of this Agreement. At the closing, Irdell shall likewise deliver to Shackleford the agreements assuming all the obligations and responsibilities of Shackleford under the leases, contracts and commitments set forth on Exhibits B and C attached hereto.

(C) At the closing, Shackleford shall deliver to Dale such assignments and other documents of transfer as shall be necessary to transfer to Dale all its rights under the leases set forth on Exhibit D attached hereto.

(D) At the closing, Dale shall deliver to Shackleford the cash payment provided for in Section 2.05 of Article II of this Agreement. At the closing, Dale shall likewise deliver to Shackleford its agreements assuming all the obligations and responsibilities of Shackleford under the leases set forth on Exhibit D attached hereto.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01. Broker Fees.

(A) Shackleford warrants to Irdell and Dale that it has not employed any broker or finder in connection with this transaction; and

(B) Irdell and Dale warrant to Shackleford that they have not employed any broker or finder in connection with this transaction.

Section 11.02. Amendment. This Agreement shall not be amended or modified except by means of a written instrument executed by Shackleford, Irdell and Dale.

Section 11.03. Parties and Interest. This Agreement shall inure to the benefit of and be binding upon Shackleford, Irdell and Dale and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any other person, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

Section 11.04. Termination of this Agreement.

(A) This Agreement and the transactions contemplated hereby may be terminated at any time prior to the date of closing:

(1) By mutual consent of the Boards of Directors of Shackleford and Irdell and the partners of Dale;

(2) By Shackleford if any of the conditions of Article VIII of this Agreement have not been met or have not been waived and/or there shall have been a material misrepresentation or breach of warranty on the part of Irdell and Dale in the representations and warranties set forth in Articles IV and V of this Agreement; or

(3) By the Board of Directors of Irdell and the partners of Dale if any of the conditions provided in Article VII of this Agreement have not been met or have not been waived and/or there shall have been a material misrepresentation or breach of warranty on the part of Shackleford in the representations and warranties set forth in Article III of this Agreement.

Section 11.05. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly delivered if delivered in person or mail, first class postage prepaid or by telegram as follows:

(A) If to Shackleford, to:

Mr. Raymond C. Cole
Harlan, Kentucky 40831

with a copy to:

Mr. James S. Greene, Jr.,
Greene & Forester
Horton Building
Harlan, Kentucky 40831

(B) If to Irdell, to:

Mr. James A. Sigmon
Post Office Box 501
Pineville, Kentucky 40977

with a copy to:

Mr. Bart A. Brown, Jr.
Dinsmore, Shohl, Coates & Deupree
2100 Fountain Square Plaza
511 Walnut Street
Cincinnati, Ohio 45202

(C) If to Dale, to:

Mr. James A. Sigmon
Post Office Box 501
Pineville, Kentucky 40977

with a copy to:

Mr. Bart A. Brown, Jr.
Dinsmore, Shohl, Coates & Deupree
2100 Fountain Square Plaza
511 Walnut Street
Cincinnati, Ohio 45202

Section 11.06. Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the subject matter hereof. No party shall be deemed or construed to have made any representation or warranty as a result of execution of this Agreement nor shall any representation or warranty be implied from such execution except representations and warranties which are expressly set forth herein.

Section 11.07. Counter Parts. This Agreement may be executed simultaneously in several counter parts, each of which shall be deemed any original part which

together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date written above.

Attest: SHACKLEFORD COAL COMPANY

By illegible
Secretary

By illegible
President

Attest: IRDELL MINING, INC.

By illegible
Secretary

By illegible
President

THE DALE COMPANY

By illegible
General Partner

Social Security Administration
Important Information

Southeastern Program Service Center
P.O. Box 10728
Birmingham, Alabama 35202
Date: 09/28/93

JERICOL MINING INC
RT 1 BOX 1000
CUMBERLAND GAP TN 37724-9801 EIN: 61-0844927

We are writing to you about the Coal Industry Retiree Health Benefit Act of 1992. Under this law, we must assign responsibility as explained below for the payment of health and death benefit premiums for retired miners and their relatives who qualify. To qualify, the miners or their relatives must have been qualified for and receiving benefits under a prior United Mine Workers of America (UMWA) benefit plan as of July 20, 1992.

We have reviewed our earnings records of retired coal miners identified by the UMWA benefit plans and decided that you are the operator responsible for the premiums for the beneficiaries named on the enclosed list. This list also explains why we have assigned you responsibility for the benefit premiums of these beneficiaries.

You will hear from the UMWA Combined Benefit Fund with more information about the benefit premiums. We will let you know of any other assignments we may make to you.

To Whom We May Assign Responsibility for Premiums

We may assign responsibility for premiums to either:

- a signatory operator that formerly employed the miner, or
- a company related to such signatory operator that is no longer in business.

Who is a Signatory Operator and Its Related Company

A signatory operator is an employer who signed an agreement with the UMWA meeting certain requirements of the new law. A related company is either:

- a member of the controlled group of corporations (within the meaning of 26 United States Code (U.S.C.) 52(a)) that includes the signatory operator; or
- a trade or business under common control (as determined by 26 U.S.C. 52(b)) with the signatory operator; or
- any other person, other than a limited partner, having a partnership interest or joint venture with a signatory operator in a business within the coal industry that employed the miner; or
- a successor in interest to any of the companies described above.

A related company must have met one of the four conditions defined above as of July 20, 1992, or if earlier, right before the signatory ceased to be in business.

How We Assign Responsibility

We assign responsibility to an operator who our records show employed the miner in the coal industry under an UMWA agreement. The operator must still be in business. If the operator is no longer in business, we assign responsibility to the operator's related company that is still in business. We assign responsibility using the following order of priority:

- the last operator to employ the miner under an agreement for at least two years if that operator was also a signatory to a 1978 or later agreement; or
- the last operator to employ the miner under an agreement if that operator was also a signatory to a 1978 or later agreement; or
- the operator who employed the miner under an agreement for the longest period of time before 1978.

If the signatory operator that employed the miner is no longer in business, its premium responsibility must be assumed by any related company still in business.

If You Disagree

If you disagree with the assignment to you of anyone on the enclosed list, you have the right to ask us to review the assignment. But first, you may want to write us at the address at the top of this letter and ask to see the miner's earnings record and the basis for the assignment. After looking at this information, if you still disagree, you can write to us at the same address and ask us to review the assignment.

To ask for a review, you must explain in writing why you disagree and either give us evidence that, standing alone, shows our assignment was in error or ask for extra time to gather evidence. If you do not give us evidence, we will not review the assignment.

Some examples of evidence we would consider include federal, State or local tax records and legal documents such as incorporation, merger and bankruptcy papers, health and safety reports filed with federal or State agencies that regulate mining activity, payroll and other employment business records, and information in trade journals and newspapers.

- You have 30 days from the day you receive this letter to either request the earnings record and the basis for the assignment or ask for a review.
- If you request the earnings record and the basis for the assignment, the 30 days to ask for a review start the day after you receive them. If you do not request this information, the 30 days to ask for a review start the day after you receive this letter.
- If you want extra time to gather evidence, you must ask for it in your written request for review. You will then have 90 days from the day you request a review to give us the evidence you want us to consider.

Unless you show otherwise, we assume that you receive any letter from us within 5 days of the date on the letter.

If You Have Any Questions

If you have any questions about this letter, please call us at 205-801-2600. If you do call please have this letter with you. It will help us answer your questions.

You can also write us at the address shown at the top of this letter. Please write to us if you want us to review the assignment.

If you have any questions about your responsibilities as an assigned operator under this new law, you should contact the UMWA Combined Benefit Fund at the address below:

UMWA Combined Benefit Fund
4455 Connecticut Ave. N.W.
Washington, D.C. 20008
(202) 895-3700

/s/ CAROLYN W. NEYMAN
Assistant Regional Commissioner
Processing Center Operations

EIN: 61-0844927 **Page 1**

List of Assigned Miners and Other Beneficiaries

Below we identify the miner(s) and their eligible relatives that we have assigned to you. We also show the reason we believe you are responsible for the coal industry health and death benefit premiums for those individuals.

Our records and UMWA records indicate that you are related to the signatory operator named below who is no longer in business. This operator would have been responsible under the law for the miner named below under the rules for how we assigned responsibility explained on page 2. Therefore, as a related company you must assume responsibility.

NOTE: Entries under "Dates Miner Employed" that display only the month and year indicate that the miner worked for one or more months in the calendar quarter ending with the month displayed.

Asterisk (*) denotes miner.

Miners and Other Beneficiaries		SSN	Dates Miner Employed by Signatory Company	Signatory Operator Name
* FLEENOR	WHEELER	E	9/64-12/68, 6/69	SHACKLEFORD COAL CO INC
FLEENOR	MAGDALENE			
* KELLY	CLARENCE		12/65-6/73	SHACKLEFORD COAL CO
KELLY	JUANITA			
* LONG	G	L	6/64-12/76, 6/77	SHACKLEFORD COAL CO.
LONG	GEORGIA			
LONG	SHAWN	D		
LONG	BRANNON	D		

LAW OFFICES
SMITH, HEENAN & ALTHEN
[LETTERHEAD OMITTED]
SUITE 400
1110 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20005-3593
(202) 887-0800
FAX (202) 775-8518
[ADDRESS OMITTED]

VIA CERTIFIED MAIL

– April 9, 1997

Anne Jacobosky
Assistant Regional Commissioner
Processing Center Operations
Social Security Administration
Northeastern Program Service
P.O. Box 6300
Jamaica, NY 11431
Return Receipt
 # Z 068 876 725

Donna Y. Mukogawa
Acting Regional Commissioner
Processing Center Operations
Social Security Administration
Great Lakes Progam Service
P.O. Box 87109
Chicago, IL 60680
Return Receipt
 # Z 068 876 713

Quittie C. Wilson
Assistant Regional Commissioner
Processing Center Operations
Social Security Administration
Southeastern Program Service
P.O. Box 10728
Birmingham, AL 35202
Return Receipt
 # Z 068 876 255

Dennise Smith
Assistant Regional Commissioner
Processing Center Operations
Social Security Administration
Western Program Service Center
P.O. Box 4061
Richmond, CA 94804
Return Receipt
 # Z 068 876 566

RE: Withdrawal of UMWA Combined Fund Beneficiaries Assigned to Jericol Mining, Inc., EIN 61-0844927

Dear Madam:

Jericol Mining, Inc. ("Jericol") (EIN 61-00844927), requests that the Social Security Administration ("SSA") withdraw certain UMWA Combined Fund beneficiaries assigned to Jericol under the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act" or the "Act").[1] Most of these assignments were based on the erroneous assumption that Jericol is "related"[2] to Shackleford Coal Company, Inc. (EIN 61-0606844) within the meaning of the Act. The beneficiaries assigned to Jericol because of its alleged "related" person connection to Shackleford are named on Exhibit 1. However, as demonstrated below, Jericol, is not "related" to Shackleford, and the Commissioner of SSA must therefore review the beneficiaries' records for reassignment. I.R.C. § 9706(f)(3).

I. Factual Background

The facts supporting this challenge are set forth below.

1. Blackwood Land Company and Penn Virginia Corporation separately own contiguous tracts of land, including coal reserves, (collectively known as "Glenbrook") located 31 miles east of the town of Harlan, in Harlan County, Kentucky. The Glenbrook tracts cover 3,300 acres of land. (Exhibit 2, pp. 2-3). Blackwood and Penn Virginia leased these properties ("the Glenbrook

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[1] 26 U.S.C. §§ 9701 et seq.

[2] *See* I.R.C. § 9701(c)(2) (related person test).

Leases") to Stonega Iron & Coke in the 1950s. Stonega assigned them to Shackleford in the mid 1960s. (Exhibit 7, p. 1).

2. In 1972, Henry Shackleford, Shackleford's then sixty-seven-year-old president and principal shareholder, and his sixty-five-year-old brother Byrd, wanted to retire so they put the company up for sale for $4.3 million. (Exhibit 2, pp. 1, 5-6, 10).

3. In late 1972, on behalf of Ray Resources Corporation, Charles and James Sigmon thoroughly investigated the company. (Exhibit 2, p. 1). They came to view it as a "very attractive acquisition" target, especially when the asking price dropped to $3.2 million. (Exhibit 2, at p. 10, 12).

4. In January 1973, James Sigmon presented a written report accompanied by a buy recommendation to Ray Resources Corporation, ("Ray") and the board of directors directed Ray's officers "to continue their negotiations concerning the possibility of the acquisition of the stock of Shackleford Coal Company. . . ." (Exhibit 3, at p. 6).

5. The Sigmon brothers were formally notified of the board's ultimate rejection of the proposed stock acquisition in late April. (Exhibit 4).

6. Charles and James Sigmon through their counsel, Bart Brown, subsequently formed a corporation, Irdell Mining, Inc. ("Irdell"). (Exhibit 5, p. 1 ¶ 3; Exhibit 6). Irdell acquired subleases to the Glenbrook Leases from Shackleford's assignees. (Exhibit 5, p. 1 ¶ 6; Exhibit 7). The subleases were subject to a reversionary interest

and Irdell's payment of per-ton royalties on all mined coal. (Exhibit 5, p. 1 ¶ 6; Exhibit 8, p. 1 ¶ 5).

7. Irdell did not acquire the stock of Shackleford. (Exhibit 5, p. 1 ¶ 6; Exhibit 14, p. 1 ¶ 6; Exhibit 8, p.1 ¶ 6).

8. Rather, Irdell bought Shackleford's operating assets, such as leasehold improvements, machinery, equipment and motor vehicles. (Exhibit 9; Exhibit 10, p. 1 ¶7).

9. The Sigmon brothers thought it might be helpful if they could operate for a while using the Shackleford name. (Exhibit 5, p. 1 ¶ 8). Shackleford's owners were not opposed to this. They agreed to change the name of their company to Kelley & Associates, Inc. ("Kelley & Associates") to free up the name Shackleford Coal Company. (Exhibit 10, p. 2 ¶ 9; Exhibit 11, Amended Articles of Incorporation and Shareholders' Consent). (The Kelley in Kelley & Associates referred to James Kelley, one of the original Shackleford owners. (Exhibit 10, p. 1 ¶ 8).

10. Irdell, in a fair market exchange, paid Kelley & Associates cash for the assets covered by the sale and then changed its name to Shackleford Coal Company. (Exhibit 12, Cashier's Checks; Exhibit 13, Amended Articles of Incorporation).

11. Kelley & Associates retained the distinct tax attributes of its statutory predecessor, Shackleford Coal Company, Inc. (Exhibit 14, p. 1 ¶ 7; Exhibit 8, p. 1 ¶ 8). Kelley & Associates ultimately liquidated and dissolved. (Exhibit 14, p. 1 ¶ 7; (Exhibit 10, p. 2 ¶ 10).

12. The new Shackleford Coal Company (formerly Irdell) commenced its operations at Glenbrook in June 1973. It subsequently signed the 1974 National Bituminous Coal Wage Agreement in connection with these operations, (Exhibit 15), and renamed itself Jericol Mining, Inc. in 1977. (Exhibit 16, Board Resolution and Amended Articles of Incorporation).

13. In 1996, SSA assigned to Jericol certain UMWA retirees, (Exhibit 1), who had retired from the Shackleford Coal Company created and owned by the Shackleford family. These beneficiaries never worked for the Shackleford Coal Company created and owned by the Sigmon family (and its statutory successor, Jericol).[3] These assignments were apparently based on SSA's determination that under section 9701(c)(2) of the Coal Act Jericol was "related" to the original Shackleford Coal Company, Inc.

II. Analysis

A. Who is a Related Person?

Jericol is not responsible for Coal Act premiums for the beneficiaries identified in Exhibit 1 because it never employed these miners, and is not "related," within the meaning of the Coal Act, to the company which did.

The Act provides four distinct tests for determining whether an entity is "related" to a signatory. I.R.C.

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[3] SSA also assigned certain UMWA retirees who went on to work for the Sigmon brothers' Shackleford Coal (or its statutory successor, Jericol) or who worked for these companies without ever working for the Shackleford brothers' Shackleford Coal. Jericol has separately challenged their assignment on other grounds.

§ 9701(c)(2)(A). An entity is "related" if it is (i) a member of a "controlled group" of corporations which includes the signatory, (ii) a business under "common control" with a signatory; (iii) a general partner or a joint venturer with a signatory; and (iv) a "successor in interest" to the related person. These tests are applied as of July 20, 1992.[4] If the signatory was not "in business" on this date, the test is applied as of the date immediately before the signatory ceased to be in business.[5] For purposes of this challenge, June 1973 may serve as the determination date for applying these tests.[6]

The related person tests are complicated. They are discussed only briefly below, because it is quite clear that Jericol was not a "related person" to Shackleford Coal Company, Inc. (renamed Kelley & Associates).

The "controlled group" related person test would be met here if Jericol had a parent-subsidiary,[7] a brother-

[4] I.R.C. § 9701(c)(2)(B).

[5] A company is "in business" if it "conducts or derives revenues from any business activity." I.R.C. § 9701(c)(7).

[6] It is unclear precisely when Shackleford Coal Compnay, Inc. (renamed Kelley & Associates) ceased to be in business. In any event, the company was likely out of business by the end of 1973. (Exhibit 14, p. 1 ¶ 7; Exhibit 10, p. 2 ¶ 10).

[7] The parent-subsidiary controlled group test is met where one or more chains of corporations is connected through stock ownership with a common parent corporation. 26 C.F.R. § 1.1563-1(a)(2). Chains of corporations linked by at least a 50% concentration of either share voting power or share value meet the test. I.R.C. § 9701(c)(2)(A)(i); I.R.C. § 52(a)(1); I.R.C. § 1563(a)(1)(A); 26 C.F.R. § 1.1563-1(a)(2)(i). Here, the test is not applicable, Shackleford Coal Company, Inc. (renamed Kelley & Associates) was never a wholly-owned subsidiary of Jericol or its statutory predecessors, (*i.e.*, Irdell and Shackleford Coal Company). Thus, the com-

sister,[8] or a combined group[9] relationship with Shackleford Coal Company, Inc. (renamed Kelley & Associates) on or about the date it ceased to be in business. I.R.C. § 9701(c)(2)(A)(i); I.R.C. § 52(a); I.R.C. § 1563(a); 26 C.F.R. § 1.1563-1(a)(1). This would have been in or after June 1973 when Shackleford Coal Company, Inc. ceased operating (or later if Kelley & Associates thereafter continued in business).

monality of ownership inquiry relating to parent-subsidiaries mandated by section 9701(c)(2) of the Coal Act need not be examined.

[8] The brother-sister prong of the controlled group test is met where the same five or fewer individuals (estates or trusts) who own a signatory operator also own a controlling interest in another entity. I.R.C. § 9701(c)(2)(A)(i); I.R.C. § 1563(a)(2); 26 C.F.R. § 1.1563-1(a)(3). This test imposes a more-than-50-percent identical ownership requirement and an 80 percent overall requirement. I.R.C. § 1563(a)(2); 26 C.F.R. § 1.1563-1(a)(3)(i). A person's stock ownership cannot be taken into account for purposes of the 80% brother-sister control requirement unless that person owns stock in each corporation of the brother-sister group. 26 C.F.R. § 1.1563-1(a)(3)(i)(b). The brother-sister prong of the controlled group test is not met here because, as noted, there is no common share ownership.

[9] The combined group prong of the controlled group test is met where there are at least three corporations each of which is a member of either a parent-subsidiary or a brother-sister controlled group and one of the corporations is the common parent of the parent-subsidiary controlled group and also is a member of a brother-sister controlled group. I.R.C. § 1563(a)(3); 26 C.F.R. § 1.1563-1(a)(4)(i). The combined group prong of the controlled group test is not met here because combined group status requires a finding of both brother-sister and parent-subsidiary control groups, which as noted, are not present here.

The new Shackleford Coal Company (formerly Irdell, now Jericol) was capitalized with 1000 shares of common stock held as follows:

	Shares
James A. Sigmon	510
Charles E. Sigmon	390
Fred R. Langley	100
	1000

(Exhibit 5, p. 1 ¶ 3; Exhibit 6, Subscriber Agreement; Exhibit 8, p. 2 ¶ 10). With the exception of Fred Langley's stake, which was purchased by James Sigmon in 1981, the shares of Jericol and its statutory predecessors (i.e., Irdell and Shackleford Coal Company) have at all times been held by Charles and James Sigmon and their family. (Exhibit 8, p. 2 ¶ 10).

By contrast, the original Shackleford Coal Company, Inc. (renamed Kelley & Associates) was capitalized with common stock held at all times as follows:

Name	% of Shares
Henry Shackleford	52.0
Sam A. Shackleford and his wife Elva	12.0
Byrd L. Shackleford	12.0
Raymond E. Cole and his wife Reba K. Cole	12.0
James E. Kelley	12.0

(Exhibit 14, p. 1 ¶ 3; Exhibit 10, p. 1 ¶ 6).

The controlled group test is not met because there has never been any common stock ownership. The

common control test[10] and the partnership or joint venture test[11] are *per se* inapplicable.

B. Who is a Successor in Interest?

1. Successor In Interest to a Related Person

Section 9701 of the Act sets forth generally applicable definitions. Section 9701(c)(2) defines the phrase "related persons." I.R.C. § 9701(c)(2). Subparagraph A of Section 9701(c)(2) identifies, in separate clauses, three peculiar relationships between a signatory operator and another entity (e.g., a joint venturer, general partner, individual, trade, business, or corporation).[12] I.R.C. § 9701(c)(2)(A)(i)-(iii). If the requisite relationship exists, the entity must be "considered to be a related person to a signatory operator." In addition, Section 9701(c)(2)(A) provides:

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[10] The common control test is an offshoot of the controlled group test. The requisite relationship is determined in accordance with the principles which apply to the controlled group test. The test is met if a trade or business is under common control with a signatory operator. I.R.C. § 9701(c)(2)(A)(ii); I.R.C. § 52(b). Jericol (and its statutory predecessors), and Shackleford Coal Company, Inc. (renamed Kelley & Associates) operated as corporations. Therefore, this test is not applicable.

[11] The partnership or joint venture test is met if a person is a joint venturer with a signatory operator or is a general partner in a signatory operation. I.R.C. § 9701(c)(2)(A)(iii). Neither Shackleford Coal Company, Inc. (renamed Kelley & Assoicates) nor Jericol (or its statutory predecessors) were partnerships or joint ventures. Therefore, this test does not apply.

[12] The "related person" definition concludes with a separate subparagraph, subparagraph B, which states the date for determining whether any of the relationships described in the three clauses exist. I.R.C. § 9701(c)(2)(B).

> A related person shall also include a **successor in interest** of any person described in clause (i), (ii), or (iii) [of Section 9701(c)(2)(A)].

I.R.C. § 9701(c)(2)(A) (emphasis added).

Thus, the "related person" definition includes a "successor in interest" of a "related person" (i.e., the "person described" in the preceding three clauses). Significantly, the plain language of the definition does not say that a "successor in interest" of a "signatory operator" is a "related person." In other words, a successor in interest to a member of Shackleford Coal Company, Inc.'s controlled group would be a related person to Shackleford under this definition, but a mere successor in interest to Shackleford is not a related person. Shackleford Coal Company, Inc. apparently had no other controlled group members, or "related persons", within the meaning of clauses (i), (ii), or (iii) of Section 9701(c)(2)(A). Jericol could not, therefore, be a successor in interest to Shackleford's nonexistent related persons. Moreover, under the definition, Jericol is not considered a related person to Shakleford, even if it would be considered a successor in interest to Shackleford.

2. Successor In Interest to a Signatory Operator

Assuming *arguendo*, that a "successor in interest" of a "signatory operator" is a "related person," Jericol still falls outside the definition. This is because Jericol does not meet the criteria for being a successor in interest to the Shackleford Coal Company created and owned by the Shackleford brothers.

The Act does not define "successor in interest". However, the term has been construed in an analogous

context. In two recent cases, the United States District Court for the Southern District of West Virginia concluded that "successor in interest" in the Coal Act has the same meaning as "successor in interest" in other parts of the Internal Revenue Code. *See UMWA 1992 Benefit Plan v. Leckie Smokeless Coal Co.*, Civ. Action No. 5:96-0092, slip op. at 16 (S.D. W. Va. April 16, 1996) (attached as Exhibit 17). The court found that a "successor-in-interest" "means an acquiring corporation in a tax-free exchange in which the acquiring corporation succeeds to the tax attributes of a selling corporation." *Leckie Smokeless*, slip op. at 16. On appeal, these decisions were affirmed on other grounds.

Under, the *Leckie* analysis, Kelley & Associates, not Irdell (renamed Shackleford Coal Company), was the Coal Act "successor in interest." Irdell paid over $3 million to buy Shackleford's operating assets. (Exhibit 12, Cashier's Checks). The transaction was an asset purchase not a stock purchase.[13]

The buyer's "opening" balance sheet is dispositive on this point. The asset side of the ledger itemizes the operating assets the Sigmon brothers bought. The zero entered adjacent to the accumulated depreciation line confirms that the seller retained the depreciation charges it had previously taken against the operating

[13] The fact that Irdell obtained the legal right to the name "Shackleford Coal Company" when it was made available by virture of the original holder of the name switching to "Kelley & Assoicates, Inc." does not make Jericol a "successor in interest" to Shackleford Coal Company, Inc. Without regard to whether retaining a predecessor's name, hiring its employees and so forth may constitute some indicia of commercial or labor law successorship, this is not material to being a "successor in interest" within the meaning of the Coal Act.

assets. The liability side of the ledger establishes that the new company's liabilities consisted of debts incurred to pay for the assets and the 1,000 shares of stock issued to the Sigmon brothers and Fred R. Langley to capitalize the business. (Exhibit 18, Opening Balance Sheet). The balance sheet underscores that the Sigmon brothers' company did not succeed to Shackleford's tax attributes. (Exhibit 8, p. 1 ¶ 8; Exhibit 14, p. 1 ¶ 7).

Moreover, the seller's officers and shareholders have confirmed that after the sale Kelley & Associates retained and benefitted from its distinct tax attributes. The attributes are detailed on Shackleford's financial statements dated April 30, 1973. (Exhibit 19, Financial Statements). These included $1.8 million of business expenses and $1.9 million of accumulated depreciation. (Exhibit 19, Income Statement). Raymond Cole confirmed that he filed tax returns in 1973[14] on behalf of Kelley & Associates claiming deductions and recognizing income based on Shackleford's pre-sale attributes. (Exhibit 14, p. 1 ¶ 7). James Kelley confirmed that ultimately received a substantial cash distribution commensurate to his ownership share in Shackleford. (Exhibit 10, p. 2 ¶ 10).

Congress apparently did not think it necessary to define the commonly understood phrase "successor in

[14] All U.S. government instrumentalities are charged with cooperating fully with SSA in fulfilling its Coal Act assignment responsibilities. I.R.C. § 9706(d). Jericol asks that SSA rely on these powers to confirm with the IRS the evidence provided herein.

interest".[15] A successor in interest is ordinarily understood to refer to the entity that results from a change in form rather than a change in substance. The leading legal dictionary, defines the term as follows:

> In order to be a 'successor in interest,' a party must continue to retain the same rights as original owner **without change in ownership** and there must be change in form only and not in substance, and [a] transferee is not a 'successor in interest.'" In [the] case of corporations, the term ordinarily indicates statutory succession as, for instance, when [a] corporation changes its name but retains same property.

Black's Law Dictionary 1431-32 (6th ed. 1990) (emphasis added). (attached as Exhibit 21). Indeed, SSA's internal operations manual provides that the phrase "ordinarily indicates statutory succession." Transmittal No. 9 of the SSA's *Program Operations*

[15] Congress did use the more general term "successors" elsewhere in the Coal Act, but purposefully used the more restrictive term "successor in interest" in the "related person" definition. *See, e.g., Eastern Enterprises v. Shalala*, Civ. Action No. 93-12372, slip op. at 4 n.7 (D. Mass. March 30, 1996) (attached as Exhibit 20). Had Congress intended to afford "related person" status to commercial successors of signatory operators it would have done so by explicit language in subparagraph A of Section 9701(c)(2). As Judge Wolf stated with respect to the assignment provisions of the Coal Act:

> [T]he decision not to include successor in § 9706(a)(3) is rational. . . . . It imposes a duty on the pre-1978 signatory operator, which is likely to be most familiar with the unique facts of its situation, to collect from anyone who may have agreed to assume its liability or is otherwise obligated to do so.

Eastern Enterprises, slip op. at 4-5.

Manual System (SSA Pub. No. 68-0101402, January 1994) (defining "Successor (or Successors) In Interest" at Section T01402.051). (attached as Exhibit 22).

This interpretation finds further support in SSA's long-standing practice. SSA wage histories for miners who worked for the original Shackleford Coal Company, Inc. identify "Kelly & Associates, Inc." as Shackleford's "successor in interest".[16] (See, for example, the SSA wage history of Jack J. Farley a Round Three assignee). (Exhibit 23, p. 3). Employment during the period 1973-77, when the Sigmon's company was known as Shackleford Coal Company, is reflected in SSA's records as employment with Jericol and is listed under a different EIN and company address. (Exhibit 23, p. 3).

Jericol is unquestionably the statutory successor to Irdell and the Sigmon brothers' Shackleford Coal Company. As noted, in 1977, the Sigmon brothers formally amended the articles of incorporation of Shackleford Coal Company to rename the company Jericol Mining, Inc. (Exhibit 16, Amended Articles of Incorporation). Jericol retained all the rights, including tax attributes, of Shackleford Coal Company; there was no change in ownership. *See* 18 Am. Jur.2d *Corporations* § 93, at 910

[16] Jericol reserves the right to supplement this reconsideration request after it receives from your office and reviews information responsive to its Freedom of Information Act request dated June 19, 1996 concerning wage history references to "Kelly & Associattes" [sic], as the "successor in interest" to Shackleford Coal Company, Inc. (Exhibit 25). Jericol's counsel also reserves the right to supplement this reconsideration request after it receives from your office and reviews information responsive to a second FOIA request seeking access to these records dated January 10, 1997. (attached as Exhibit 26).

(1985) (amending charter to change corporate name has no effect on corporation's property, rights or liabilities). (attached as Exhibit 24). However, as noted, neither Jericol nor its statutory predecessors (*i.e.*, Irdell and Shackleford Coal Company) are "successor[s] in interest" or otherwise "related" to the original Shackleford Coal Company, Inc. which employed the miners in Exhibit 1.

III. Conclusion

As demonstrated above, two distinct families held distinct leasehold interests on identical parcels of Kentucky coal land at two distinct times. While it is true that the Shackleford family company and the Sigmon family company briefly shared the same name,[17] the companies are totally separate. There is no overlap in ownership between the two companies.

In sum, neither Jericol nor its statutory predecessors (i.e., Irdell and Shackleford Coal Company) is a "related person" to Shackleford Coal Company, Inc. (renamed Kelley & Associates) within the meaning of Section 9701(c)(2) of the Coal Act, because Jericol is not a

[17] We note that even a leading industry publication failed to discern the distinction between Shackleford Coal Company, Inc. owned by the Shackleford brothers through May 1973 and the Sigmon brothers' Shackleford Coal Company (June 1973 – November 1977). For instance, entries in the 1973, 1974 and 1975 *Keystone Coal Industry Manual* erroneously identify the Shackleford brothers, Henry and Byrd, as officers of the Sigmon's Shackleford Coal Company. (Exhibit 27). The error is glaring given that Henry Shackleford died in 1973, (Exhibit 5, p. 2 ¶ 11), and the Sigmons never hired Byrd Shackleford. Charles and James Sigmon are not identified as officers of their own company until the 1976 Keystone entry. (Exhibit 28).

"successor in interest". Jericol and its statutory predecessors satisfied none of the statutory relationship tests as of the June 1973 determination date. Thus, the assignments on Exhibit 1 must be withdrawn.

Jericol is making certain beneficiary-specific challenges by separate letter. The letter containing specific challenges relating to beneficiaries assigned by your office will be forwarded under separate cover.

Please contact us, should you have any further questions about this matter.

Sincerely,

/s/ JOHN R. WOODRUM
JOHN R. WOODRUM
W. Gregory Mott
Counsel for Jericol
Mining, Inc.

Enclosures
cc: Jerry Cooksey

AFFIDAVIT OF R. WAYNE STRATTON

I, R. Wayne Stratton, do hereby state under oath as follows:

1. My address is 642 South Fourth Ave., Suite 300, Louisville, KY 40202-9975. I have personal knowledge of the facts related in this Affidavit.

2. I am a certified public accountant and a member of the firm of Jones, Nale & Mattingly PLC.

3. During the past 25 years, I have provided a wide range of financial consulting, tax and accounting-related services to James A. Sigmon and Charles E. Sigmon in connection with their various businesses.

4. In this capacity, I have been involved in negotiating, structuring and concluding a number of transactions, including their transaction with the Shackleford family in May 1973.

5. In April 1973, I assisted the Sigmon brothers form Irdell Mining, Inc. In May 1973, I assisted Irdell acquire two subleases with respect to coal lands owned by the Penn Virginia Corporation and the Blackwood Land Company, properties which Shackleford Coal Company had leased until it assigned its leasehold interests to the subleasors. The subleasors retained a right of reversion in the properties and received a per-ton royalty payment from Irdell.

6. At the same time, I also assisted Irdell in purchasing the leasehold improvements and equipment of Shackleford Coal Company. We structured this transaction as an asset sale; no stock changed hands.

Shackleford received fair market value for the assets it sold.

7. Shortly after these transactions I obtained a tax identification number for Irdell, which had by this time had been renamed Shackleford Coal Company. This number is distinct from the one used to identify the old Shackleford Coal Company, which had been owned by the Shackleford family, and which had changed its name to Kelley & Associates, Inc.

8. I have coordinated, reviewed, and caused the filing of every federal and state income tax return of the Sigmon brothers' Shackleford Coal Company, and of the renamed corporation—Jericol Mining, Inc. At no time have any of these companies in any manner usurped the distinct income tax attributes retained by the Shackleford Coal Company (renamed Kelley & Associates), including its retained interest, dividends, or other income (including pension plan termination income), depreciation, miscellaneous deductions (including deductions for insurance officer and employee compensation, workers' compensation, regulatory expenses, Black Lung claims and legal expenses and accounting expenses incurred in the asset sale), depletion, net operating carryover losses or general business credit carryforwards.

9. In addition, there has never been any common ownership between Shackleford Coal (renamed Kelley & Associates) and Jericol (including its predecessors).

10. Irdell's stock was initially held as follows: James Sigmon (510 shares), Charles Sigmon (390) and Fred Langley (100). With the exception of Fred Langley's stake, which was purchased by James

Sigmon in 1981, the shares of Jericol and its predecessor, Shackleford Coal Company, have at all times been held by the Sigmon brothers and their family.

11. I believe Henry Shackleford owned the controlling interest (52%) of the Shackleford brothers' Shackleford Coal Company and Byrd, Sam and Elva Shackleford and James Kelley and Raymond Cole and his spouse held the remaining forty-eight percent (48%).

12. In summary, at different times the Shackleford brothers and the Sigmon brothers both owned a company bearing the same name; however these companies, as well as their predecessors and successors, had distinct tax attributes and separate ownership.

Further Affiant sayeth not.

/s/ R. WAYNE STRATTON
R. WAYNE STRATTON

AFFIDAVIT OF JAMES E. KELLEY

I, James E. Kelley, do hereby state under oath as follows:

1. My address is 2344 Wax Avenue, Big Stone Gap, VA 24219. I have personal knowledge of the facts related in this Affidavit.

2. I was a close friend of Henry Shackleford as well as his brothers, Sam and Byrd. I was involved in every business venture Henry undertook from the day we stopped working for Consolidated Coal in 1948 until Henry's death in 1973. These ventures included Closplint Coal Company, which operated around Crummies, Kentucky during the 1950s and early 1960s and Shackleford Coal Company, Inc., which mined near Holmes Mill, Kentucky from 1963 until the spring of 1973.

3. At no time did any of these ventures have any connection whatsoever with a company called Nashville Coal, Inc. Nor do I recall Henry's brothers having any additional ventures.

4. I was Secretary of Shackleford Coal Company. My responsibilities also included serving as the company's office manager and purchasing agent. During the time it operated Shackleford Coal Company was the only nonmechanized mine in the area. We employed more than two hundred miners under a special contract with the union.

5. I owned 12% of the company.

6. The rest of the company was always owned as follows:

Name	Share %
Henry Shackleford	52.0
Sam & Elva Shackleford	12.0
Byrd Shackleford	12.0
Raymond & Reba Cole	12.0

7. As Secretary I had a substantial role in concluding the sale of Shackleford assets to Charles and James Sigmon in the spring of 1973. I prepared and signed a number of sale documents including the Bill of Sale between Shackleford and Irdell Mining, Inc., which was the name of the Sigmon brothers' Company at that time.

8. In addition, on May 31, 1973, Byrd Shackleford and I signed an Amendment to the Shackleford Coal's Articles of Incorporation and I swore as to its accuracy before Raymond Cole. Raymond Cole was a notary and the company's Controller. The amendment certified that the board of directors had met the day before and unanimously resolved to change the name of the company to Kelley & Associates, Inc. The new name was Raymond Cole's idea. The Kelley in Kelley & Associates refers to me.

9. We changed our company's name because the Sigmon brothers were strangers to the area. They wanted to continue using the Shackleford Coal name because it was well known to everyone in the area, and they felt using the Shackleford name would make it easier for them to establish themselves in the area.

10. Kelley & Associates remained a viable company for a while. It eventually wound down and dissolved. To the best of my recollection, I cashed in my 12% stake and I had to pay some $80,000 in long-term capital gains.

11. After the sale, the Sigmon brothers hired me to serve as vice president of their company (formerly Irdell Mining), which they had renamed Shackleford Coal. After the Sigmon family acquired Shackleford Coal Company's assets and established a toe hold in the area, they promptly moved to invest substantial capital in mine development and new technology. The Sigmon's hired me because they figured I could work with the union just like I had done for Shackleford. I later signed the 1974 NBCWA on behalf of the Shackleford Coal Company, which was then owned by the Sigmon family.

12. I served as vice president of the new Shackleford Coal Company until I resigned in December 1975. Thereafter, I went into public service and later became the mayor of Big Stone Gap, Virginia.

13. I never owned any stock in the Sigmon brother's Shackleford Coal. To my knowledge, the only shareholders were Fred Langley and the Sigmon brothers.

Further Affiant sayeth not.

/s/ JAMES E. KELLEY
JAMES E. KELLEY

AFFIDAVIT OF RAYMOND E. COLE

I, Raymond E. Cole, do hereby state under oath as follows:

1. My address is 8001 Greenhurst Court, Louisville, KY 40299. I have personal knowledge of the facts related in this Affidavit.

2. I am a retired certified public accountant. I was formerly a shareholder of Shackleford Coal Company, Inc. and the company's controller and assistant secretary-treasurer. In this capacity, I prepared and filed the company's income tax returns and provided other tax accounting-related services to the business.

3. This company was owned as follows: Henry Shackleford and/or his family members owned 52 percent. Sam Shackleford, Byrd Shackleford, James E. Kelley and Raymond Cole and/or their family members owned the other 48 percent.

4. At no time did any member of the Sigmon family own any stake in this company.

5. I was involved in negotiating and concluding a deal with the Sigmon brothers through their company, Irdell Mining, Inc. An agreement was reached between the shareholders of Shackleford Coal Co., Inc. and the Sigmon brothers in the latter part of 1972 and a statement of intent was signed in December of 1972. The transaction was concluded in early 1973.

6. This transaction was an asset purchase. The Shacklefords would have readily agreed to a stock

purchase, Irdell, however, made it clear that it did not want a stock purchase.

7. Shackleford Coal Company, Inc. was renamed Kelley & Associates, Inc. I prepared and filed 1973 Federal and Kentucky income tax returns for Kelley & Associates which included all of the information concerning the sale of Irdell Mining, Inc. that was required to be included on these returns. I do not recall having any discussions or being concerned with the retention or transfer of tax attributes. Shackleford Coal Co., Inc. did not have any capital loss or net operating loss carryovers. My concern with the sale to Irdell Mining, Inc. was primarily if not solely limited to the accounting and income tax consequences to the shareholders of Shackleford Coal Co., Inc. All other matters were handled by the attorneys.

8. Thereafter, I did some accounting work for the Sigmon brothers for about a year as an outside independent accountant.

Further Affiant sayeth not.

/s/ RAYMOND E. COLE
RAYMOND E. COLE

SHACKLEFORD COAL COMPANY, INC.

FINANCIAL STATEMENTS

APRIL 30, 1973

PREPARED WITHOUT AUDIT
FOR MANAGEMENT PURPOSES ONLY

...ACKLEFORD COAL COMPANY, INC.
INCOME STATEMENT

PREPARED WITHOUT AU[redacted]
FOR MANAGEMENT PURPOSES ONLY

	April 1973		Year To Date	
Tons NOTE 1	21,772		168,921	
	Per Ton	Amount	Per Ton	Amount
Coal Sales:				
Railroad		243,238.96		2,155,311.33
Retail		8,082.04		126,643.88
Inventory Change		22,662.21		48,276.16
Total	12.5842	273,983.21	12.3344	2,330,231.37
Ky. Severance Tax	.3000	6,538.00	.3000	56,680.50
Net Sales	12.2842	267,445.21	12.0344	2,273,550.87
Operating Expense:				
Selling Expense	.5093	11,088.48	.4777	90,249.19
Association Dues	.0227	494.38	.0257	4,755.05
Electric Power	.2898	6,308.80	.2626	49,617.40
Insurance - W. C.	.6280	13,672.32	.4843	91,496.93
Insurance - Other	.0479	1,043.35	.0376	7,096.30
Interest Expense	.0230	500.00	.0185	3,500.00
Legal and Professional	--	-0-	.0247	4,655.00
Labor - Mine		(66,317.14		(663,057.47
Labor - Tipple	3.6047	(12,163.87	4.0917	(109,958.92
Miscl. Expense	.0037	82.45	.0031	589.23
Office Expense	--	10.50	.0042	788.70
Mineral Royalty	.1501	3,268.88	.1500	28,340.00
Rent	--	-0-	.0440	8,320.53
Salaries - Office & Admr.	.7323	15,944.40	.5912	111,683.72
Mine Supplies	1.4200	30,917.06	1.6968	320,565.71
Spray Oil	--	-0-	.0047	893.46
Taxes - Payroll	.2665	5,801.30	.2114	39,942.27
Taxes - Property & Miscl.	.0735	1,600.18	.0655	12,374.66
Timbers	.0244	531.00	.0875	16,546.94
Telephone	.0065	142.20	.0060	1,142.12
Truck and Auto	.0170	369.45	.0137	2,597.61
Welfare Royalty	.6506	14,165.16	.6398	120,874.06
Vac. & Holiday Pay	.2848	6,200.00	.2542	48,028.53
Hauling Refuse	.0952	2,072.38	.1025	19,359.88
Hauling Coal	.1399	3,045.00	.1213	22,915.21
Roads	.0717	1,560.94	.0619	11,697.66
Travel Expense	--	-0-	.0012	234.78
Employee Benefits	.0023	50.00	.0077	1,462.00
Wheelage REnt	.0051	111.16	.0008	150.00
Other	--	-0-	(.0206)	(3,889.16)
Total Expense	9.0695	197,460.40	9.4696	1,789,004.17
Income Before Depreciation	3.2147	69,984.81	2.5648	484,546.70
Estimated Depreciation	1.1483	25,000.00	.9263	175,000.00
Income Before Income Tax	2.0664	44,984.81	1.6385	309,546.70

NOTE 1 - RAILROAD CAR SHORTAGE, WORKED 12 DAYS OUT OF 21 DAYS AVAILABLE

BEST AVAILABLE COPY

SHACKLEFORD COAL COMPANY, INC.
BALANCE SHEET
APRIL 30, 1973

PREPARED WITHOUT AUDIT
FOR MANAGEMENT PURPOSES ONLY

ASSETS			
Current Assets:			
Cash In Banks		295,013.32	
Account Receivable - General Coal Co.		232,150.48	
C.S.V. Life Insurance		48,365.90	
Deposits		25,565.00	
Coal Inventory - In Transit		131,291.70	
Coal Inventory - Stock		7,000.00	
			739,386.40
Depreciable Assets:			
Property, Plant and Equipment		4,655,303.84	
Accumulated Deprec. to Beg. of Year		(1,921,189.55)	
Estimated Deprec. - Year To Date		(175,000.00)	
			2,559,114.29
Other Assets:			
Prepaid Expense			14,695.57
TOTAL ASSETS			3,313,196.26
LIABILITIES			
Current Liabilities:			
Accounts Payable		69,790.84	
Notes Payable		100,500.00	
Accrued Payroll		27,413.97	
Accrued Payroll Taxes		15,311.84	
Accrued Property Taxes		13,289.92	
Accrued Kentucky Severance Taxes		6,538.50	
Accrued Vacation & Holiday Pay		61,000.00	
Accrued Income Taxes	77,000.00		
Less Prepayments	54,945.00	22,055.00	
			315,900.07
Shareholders' Equity:			
Capital Stock Issued		31,000.00	
Retained Earnings, Beg. of Yr.	2,733,749.49		
Income, Year to Date	309,546.70		
Provision for Income Taxes	(77,000.00)	2,966,296.19	
			2,997,296.19
TOTAL LIABILITIES			3,313,196.26

AREA CODE 606
TELEPHONE 837-2840

SHACKLEFORD COAL COMPANY

INCORPORATED

HOLMES MILL, KENTUCKY 40843

July 10, 1973

Mr. Bart A. Brown, Jr.
Dinsmore, Shohl, Coates & Deupree
2100 Fountain Square Plaza
Cincinnati, Ohio 45202

Dear Bart:

Per your request I enclose an opening Balance Sheet for Shackleford Coal Company as of June 1, 1973. This Balance Sheet is immediately after the completion of the purchase of the physical assets and leaseholds and the borrowings from the First National Bank of Cincinnati and Mr. James Sigmon.

This is an unaudited balance sheet prepared by me as controller of Shackleford Coal Company; no independent accountant's opinion is being supplied or intended.

Yours very truly,

/s/ RAYMOND COLE
RAYMOND COLE

RC:pf

Enclosures

Copy to: Mr. Willis C. Nale
Mr. James A. Sigmon
Mr. Charles E. Sigmon
Mr. Rolf Brookes

SHACKLEFORD COAL COMPANY
UNAUDITED BALANCE SHEET
JUNE 1, 1973

ASSETS

Current Assets:		
Cash in Bank, First National, Cincinnati	352,126.84	
Inventory (Coal In Storage)	83,456.00	
Inventory (Mine Supplies)	118,990.00	
Total Current Assets		554,572.84
Depreciable Assets: (Acquired 6/1/73)		
Coal Preparation Plant	1,035,779.69	
Buildings and Houses	128,027.82	
Mining Equipment	1,093,124.66	
Rolling Equipment	73,541.46	
Office Equipment	16,771.42	
Other Equipment	98,182.11	
Total	2,445,427.16	
Less Accumulated Depreciation Charges	-0-	
Book Value		2,445,427.16
Other Assets:		
Coal Mine Leasehold (Note 1)		-0-
TOTAL ASSETS		3,000,000.00

LIABILITIES AND CAPITAL

Current Liabilities:		
Mortgage Note Payable, First National Bank, Cincinnati Principal Payments of $100,000 Due December 31, 1973 and March 31, 1974		200,000.00
Long-Term Liabilities:		
Mortgage Note Payable, First National Bank, Cincinnati	2,000,000.00	
Less Current Portion	(200,000.00)	
Balance Payable $100,000 Quarterly Beginning June 30, 1974	1,800,000.00	
Mortgage Note Payable, James Sigmon, Due May 31, 1978	500,000.00	
		2,300,000.00
Shareholders' Equity:		
Capital Stock Authorized 1,000 Shares No Par Value Common Stock. Issued and Outstanding, 1,000 Shares		500,000.00
TOTAL LIABILITIES AND CAPITAL		3,000,000.00

See notes to Balance Sheet attached.
Unaudited - See letter attached.

SHACKLEFORD COAL COMPANY
NOTES TO UNAUDITED BALANCE SHEET
JUNE 1, 1973

Note 1

The Company is obligated under coal mine leases from the Penn Virginia Corporation and the Blackwood Land Company assigned to the Dale Company, Pineville, Kentucky and subleased to Shackleford Coal Company to mine certain coal seams to normal exhaustion of all coal on approximately 3,000 acres of land in Harlan County, Kentucky. Royalty is 10% of the gross selling price of coal or approximately $1.25 per ton. Minimum annual royalty is $18,000.00 per year on each leasehold.

Note 2

The Company is obligated under a purchase commitment to the FMC Corporation, Fairmont, West Virginia for two (2) Galis Shuttle cars in amount of $78,309.05.

RAY RESOURCES CORPORATION
630 Commerce Square
CHARLESTON, WEST VIRGINIA 25301

PLEASE ADDRESS YOUR REPLY TO
3 East 54th Street
New York, New York
10021

April 26, 1973

Messrs. James and Charles Sigmon
Middlesboro, Kentucky

Dear James and Charles:

Pursuant to the authorization of the Board of Directors at the meeting held on April 12, 1973, the Executive Committee has given further consideration to the possibility of Ray Resources Corporation acquiring Shackleford Coal Company of Harlan County, Kentucky.

As a result of such further consideration, Ray Resources Corporation has concluded that the company would not be interested in acquiring any interest in this company or its assets.

Yours Sincerely,

REEVES LEWENTHAL
REEVES LEWENTHAL

RL:lal

SHACKLEFORD COAL COMPANY

We have been investigating a number of possibilities for acquisition of operating coal properties. We considered the most promising of these to be Shackleford Coal Company, Harlan County, Kentucky, and have, therefore, concentrated our recent efforts on it.

These efforts included a physical inspection of their properties, including visits to their operating mines, their washer and preparation plant and the seams of coal they are not presently mining; review of their mine maps; and a review of their relevant financial data.

Following this review, we met with Henry Shackleford, President and principal shareholder of the Company, and Raymond Cole, Secretary-Treasurer and a shareholder of the Company, on January 5, 1973, to negotiate terms under which the Company might be acquired.

Following extensive discussions and negotiations, we agreed that a fair price for all the stock of the Company based on its December 31, 1972 situation would be $3,230,000. This price would be increased by earnings of the Company from December 31, 1972 to the date of closing or decreased by any losses for this period. A summary of the essential terms under which the Company can be acquired is attached hereto as Exhibit A. A target date for closing is March 1, 1973.

As described in detail hereinafter, we believe this to be an excellent acquisition at this price. We strongly recommend that you authorize us to pursue this matter and work out a definitive Purchase Agreement to be submitted to this Board for its consideration.

To realize the full potential from an acquisition of the Shackleford Coal Company, additional capital expenditures amounting to approximately $1,500,000 must be incurred. By making these expenditures, the production of Shackleford can be roughly doubled and the profits of the Company can be more than doubled. Thus, we believe that this Board should consider this as an approximately $4,800,000 acquisition. In connection therewith, we recommend that the Board consider now where the funds to make this acquisition will be obtained so that the necessary funds will be available by March 1, 1973.

A summary of relevant information as to Shackleford Coal Company is as follows:

The Shackleford Coal Company operates the Glen Brooke mines which are located approximately 31 miles east of Harlan, Kentucky, in Harlan County. The properties being mined are covered by two separate leases covering contiguous properties as follows:

(1) The Blackwood Lease covers an approximately 1,909 acre tract and permits the mining to exhaustion of all seams of coal located on this property. The principal seams are the High Splint, Middle Splint, Low Splint, Creech and Darby. Other seams are located on this property but they have not been mined or prospected. The royalty rate is 15 cents per ton, but there is some possibility [illegible] would be to lock in the 15 cents per ton royalty rate.

(2) The Penn Virginia Lease covers an approximately 1,257 acre tract and permits the mining to exhaustion of only the High Splint seam. It is unlikely that a lease of the other seams could be

obtained. The royalty with respect to this property is 15 cents per ton and is not subject to change.

Shackleford is presently mining the High Splint and Low Splint seams located on these properties. This coal is an extremely high-quality metallurgical coking coal. With washing, the BTU content will run 13,200 to 13,500, the ash content is less than 6 percent and the sulphur content averages .62 percent. The coal in the High Splint seam runs approximately six feet in thickness and we estimate the recoverable reserves from this seam at approximately 12,000,000 tons. The coal in the Low Splint seam runs seven to nine feet in thickness with two small partings and we estimate the recoverable tonnage at between 6,000,000 and 7,000,000 tons. Consequently, recoverable reserves from just these two seams would amount to approximately 18,000,000 tons.

The mining operations in these two seams consist of two mines located in the High Splint seam and one mine located in the Low Splint seam. All of these mines have excellent mining conditions and are well-laid out, well-developed mining operations. There is good compliance with the mine safety rules. The equipment is in excellent shape and is well maintained. Some of the miners are now three to four years old and production could be materially increased by exchanging these miners for the latest mining equipment. If this were done, the new equipment would more than pay for itself within a very short period of time through increased production. Moreover, the capacity of two of these mines could be more than doubled by putting a new mining unit in each mine. The cost of each new complete mining unit would run approximately $400,000

and, again, more than pay for itself through increased production within a very short period of time.

We also inspected the washer and preparation facilities and found them to be well built and well maintained. The Company is presently running only a single shift at the washer and preparation plant and processing approximately 330,000 tons of clean coal per year. With some minor changes in the conveyor system, we believe this tonnage could be increased to approximately 400,000 tons for a single shift and to as much as 800,000 tons per year by going to a double shift. Moreover, the labor force used to operate this washing plant can be reduced somewhat with certain mechanical changes. The Company has no water or waste pollution problem.

Other equipment and facilities of the Company are well maintained and in excellent condition. They have sufficient equipment on hand to put in any desired new mines, roads, etc.

In addition to the High Splint and Low Splint seams that are presently being mined, the Middle Splint, Creech and Darby seams on the Blackwood property represent very substantial future mining opportunities.

The Middle Splint seam is approximately 50 inches in height; the coal has essentially the same characteristics as the coal from the High Splint and Low Splint seams; and the mining conditions are excellent. This seam should probably be mined along with the Low Splint, as it is located only about 30 to 35 feet above the Low Splint seam. If we acquired this property, we would want to have a mine consulting firm review this seam and the Low Splint seam and then advise us as to the means by which the maximum tonnage could be

produced from both seams. Then, working with the land owner, we could jointly develop a program for mining both seams.

The Creech seam is about five feet in height and has two small partings. Consequently, this coal would have to be washed. The quality of this coal is not as high as the other seams located on this property but, with blending, could possibly be sold as metallurgical coal or would at least be saleable as a high-quality steam coal. Mining operations in connection with this seam are excellent and a tremendous tonnage could be mined from this seam at a relatively low cost per ton.

The Darby seam is approximately 50 inches in height and is the highest quality coal on this property. It represents the largest undeveloped area of Darby seam coal in all of Harlan County. This coal has a BTU content of more than 14,000; ash of less than 3 percent; and a sulphur content of less than .6 percent. Unfortunately, mining conditions for this seam are quite poor. Because of the poor mining conditions, we would not recommend that this seam be mined at this time. However, one of these days, this seam will be mineable at a very substantial profit.

Management of this Company consists of four Shacklefords. Henry and Byrd Shackleford are 67 and 65 years of age, respectively, and want to retire. Both, however, would agree to be available on a consulting basis. Sam Shackleford is 54 years of age and is general mining superintendent. Tom Shackleford is approximately 43 years of age and supervises the operations of the preparation plant and loading operations. Both Sam and Tom Shackleford will stay on to continue the day-to-day mining operations.

For years, the Shacklefords have run only a United Mine Workers operation. However, the entire labor force has been carefully screened and represents an extremely loyal group of employees. The over-all quality of the Company's labor force is much higher than the usual UMW labor force. With Tom and Sam Shackleford staying on, we believe the same high-quality labor force can be maintained. Supervisory personnel are loyal and highly competent. All of the supervisory personnel would stay on.

Since 1970, more than 90 percent of the coal mined from this property has been sold to United States Steel. The price today is $11.99 per ton and, after January 1, 1973, will be increased to cover increased workmen compensation costs.

United States Steel is willing to take as much coal from this property as can be produced. Thus, there is a waiting market for any increased production. If production could be roughly doubled, freight costs could be decreased $1.00 to $1.25 per ton which would likely increase the price United States Steel would be willing to pay for the coal. Finally, based on present market conditions, the price to United States Steel for this quality coal is somewhat low. Consequently, a price increase is possible, particularly if the freight cost could be decreased.

Financial Data

Balance Sheet Analysis

The Company uses a September 30 fiscal year. Its balance sheet as of September 30, 1972 reflects the following:

Current Assets	$ 616,780
Fixed Assets	4,392,250
Less: Accumulated Depreciation	(1,921,189
Total Assets	$ 3,087,841
Current Liabilities	$ 323,092
Net Worth	2,764,749
	$ 3,087,841

Book value of fixed assets reflect straight-line depreciation except for assets acquired in fiscal 1972 where accelerated depreciation was used. The use of accelerated depreciation resulted in a decrease of book value of the assets acquired in fiscal 1972 by some $28,000 more than would have resulted had straight-line depreciation been used.

Also, the balance sheet reflects no supplies inventory. The accountant estimates that mine supplies now on hand amount to more than $100,000. In our opinion and based on our inspection of the mines, this estimate is probably conservative.

In addition, the Company has followed the same practice that we followed of expensing all mine development costs. Thus, none of these costs are reflected on its balance sheet.

Taking into account book value at September 30, 1972, earnings for the last three months of 1972, the excess depreciation over straight-line depreciation, a true supplies inventory and the true unamortized mine development costs, the purchase price is undoubtedly something less than what a true book value would be.

Profit and Loss Analysis

In its fiscal year ended September 30, 1970, the Company began the development of its relationship with United States Steel. By the end of this fiscal year, substantially all its production was being sold to United States Steel. With United States Steel being virtually its solo customer for only fiscal 1971 and 1972, we believe its operating results for these years are of primary importance and its operating results for other years should be disregarded.

The Company's operations for these years can be summarized as follows:

	Year Ended September 30	
	1971	1972
Tonnage Sold	316, 386	327,940
Sales	$ 3,456,879	$ 3,766,309
Less: Cost of Sales	(2,273,480)	(2,625,175)
Depreciation	(225,124)	(319,022)
Selling & Other Costs	(279,236)	(322,303)
Interest	(16,271)	--
Income From Coal Operations	$ 662,768	$ 499,748
Other Income	13,761	$ 19,706
Income Before Income Tax	$ 676,529	$ 519,456
Income Taxes	(129,431)	(109,451)
After-Tax Profit	$547,098	[illegible]

On a per ton basis, operations for these years reflect the following:

	Year Ended September 30	
	1971	1972
Sales	$10.93	$11.48
Less: Cost of Sales	(7.19)	(8.00)
Depreciation	(.71)	(.97)
Selling & Other Costs	(.88)	(.98)
Interest	(.05)	–
Income From Coal Operations	$ 2.10	$ 1.53

Expenses for fiscal 1971 and 1972 include $33,000 per year in rent which is paid to a related partnership for rental of some mining equipment. The after-tax profit therefrom amounted to about $20,000 per year. These partnership assets are to be included in the deal. Consequently, considering both the Company and the partnership, earnings for fiscal 1971 and 1972 amounted to about $567,000 and $430,000, respectively, or an average of about $500,000 per year in after-tax earnings.

In connection with these profits, it is to be noted that, in fiscal 1972, the UMW went on strike for approximately 50 days. Therefore, the profit for this year represents only a ten-month operation. Also, for fiscal 1972, the Company thought it had a substantial problem because of its price freeze situation. As a result, the Company held down production and attempted to increase its costs to the maximum extent possible. This accounts for the tremendous build-up of supplies that was previously mentioned. (In this connection, the Company has now determined that its profit margins for the base period years were high enough to cover its price increases through 1972. However, if we acquire Shackleford and their profits are combined with those of Ray and Coal Resources, the average profit margins are such that the Company could continue to increase its prices substantially without any price freeze problem.)

The original asking price for the Company was $4,300,000 which, as previously mentioned, has been reduced to $3,230,000. Based on average after-tax earnings of $500,000, this price represents slightly less than 6 1/2 times earnings. Taking into account average depreciation for those two years of about $275,000, this

price would be recovered through earnings and depreciation in about 4.2 years.

However, as previously mentioned, the real value of these properties is in the potential for substantially increased production. Thus, if these properties are acquired, we would want to add approximately $1,500,000 in capital improvements to these properties ($800,000 to add two complete new mining units to the present mines; $400,000 for the newest model miners in existing mines; and $300,000 for belt feeders, haulage equipment and miscellaneous capital additions). With these capital improvements, we would anticipate a minimum annual production of 800,000 tons.

Because of the delivery time needed for this new equipment, we would anticipate that it would be towards the end of 1973 before we could get production to the annual level of 800,000 tons. Assuming a March 1 completion date for this acquisition, we would anticipate production in the area of 500,000 tons for 1973. Beginning with 1974, the level of 800,000 tons or more could be attained.

Following our acquisition of these properties, we believe that a conservative profit per ton before our 10 percent bonus would be $1.75 per ton. For 1974, in which the level of 800,000 tons of production can be reached and using a profit of $1.75 per ton, we believe the following results are conservative but reasonable:

	Profit & Loss Statement	Cash Flow
Profit of $1.75 per ton x 800,000 tons	$1,400,000	$ 1,400,000
Less: 10% Bonus to Sigmons	(140,000)	(140,000)
Before-Tax Profit	1,260,000	1,260,000
Income Taxes at 26%	(327,600)	(327,600)
Net Profit After Taxes	$ 932,400	$ 932,400
Depreciation (estimated)		500,000
Cash Flow After Taxes & Interest Cost		$ 1,432,400

Thus, we believe that, by 1974, these properties would provide Ray with a profit representing a 19.4 percent on its investment of $4,800,000 and a recovery of this cost through earnings and depreciation in less than 3 1/2 years.

In connection with the estimate of the per ton profit at $1.75 per ton, Shackleford estimates its per ton profit for 1973 at $1.8182 based on production of 330,000 tons and at $2.2917 based on production of 360,000 tons. See, in this regard, Exhibit B attached. This, of course, reinforces our belief that a per ton profit of $1.75 is very conservative.

As you can see from this report, we are very impressed with the Shackleford coal properties. This is one of the finest blocks of coal in Harlan County. We think that, with Sam and Tom Shackleford staying on, continuity of management and the excellent relations that the Company has with its employees can be maintained. The one problem that has concerned us is

our ability to run a union operation with Shackleford Coal Company and a non-union operation at Coal Resources. Knowing, however, the people involved and through the use of separate corporations, we believe this separation can be maintained. Finally, we believe the asking price has been reduced to a point where this is a very attractive acquisition in the light of the profits it will generate.

James A. Sigmon
Charles E. Sigmon

EXHIBIT A

UNDERSTANDING
WITH
SHACKLEFORD COAL COMPANY

(1) Prior to the closing, Glenbrook Equipment Company will sell to Shackleford Coal Company its equipment at its then book value.

(2) At the closing, the shareholders of Shackleford Coal Company will sell to Ray Resources Corporation and Ray will purchase from these shareholders all the outstanding stock of Shackleford Coal Company. The price for this stock will be $3,230,000 plus the after-tax profits of Shackleford Coal from December 31, 1972 to the date of closing or minus the after-tax losses of Shackleford Coal for this same period. Profits or losses after December 31, 1972 will be calculated in the same manner and using the same accounting principles as Shackleford Coal Company is now using. This entire purchase price will be paid in cash at the closing.

(3) Conditions to closing will be as follows:

(a) Westmoreland will relinquish its right of first refusal;

(b) Ray can obtain an engineering study certifying to proved reserves of at least 8,500,000 tons of coal and probable reserves of at least 15,000,000 tons of coal from the Shackleford properties;

(c) Shackleford's counsel will furnish to Ray his opinion as to title to the Shackleford leaseholds that will enable Ray to obtain title insurance on the properties at usual premium rates;

(d) Shackleford and its key employees (Sam Shackleford, Raymond Cole and perhaps others) will enter into three-year management contracts mutually acceptable;

(e) Henry and Byrd Shackleford will enter into Agreements Not to Compete with Shackleford mutually acceptable;

(f) Ray is satisfied as to the royalty arrangement with Blackwood Land Company. In this connection, Ray and its representatives will not discuss this matter with Blackwood or any other third parties without the expressed consent of Shackleford Coal Company; and

(g) Shareholders of Shackleford will warrant Balance Sheet of Shackleford as of December 31, 1972. They will reimburse Ray for any undisclosed liabilities (including taxes other than arising out of "roll-over" adjustments) exceeding $25,000. The December 31, 1972 Balance Sheet of Shackleford Coal will be prepared in the same manner and using the same accounting principles as Shackleford Coal used in the preparation of its September 30, 1972 Balance Sheet.

(4) Pending closing, Shackleford Coal will be operated in the usual manner and in accordance with

its regular business practices. No raises to employees or dividend payments will be made pending closing. Shackleford Coal will not make any commitments (other than for items it has already agreed to purchase) without the written consent of Ray pending the closing. Also, pending the closing, Shackleford Coal will give Ray and its agents access to any and all information concerning its affairs as Ray and its agents may reasonably request.

(5) Final arrangement is subject to definitive agreement containing usual warranties being worked out and properly executed and agreement of Ray's Board of Directors.

(6) Target date for closing is March 1, 1973.

TRANSMITTAL No. 9
SSA Pub. No. 68-0101402
January 1994

Audience:
NEPSC, SEPSC, GLPSC,
WNPSC—CA, CATA, BA,
PETE, CIES, RCOVTA,
RECOVR, RECONR
OCRO—DCCRC, DCCAIC,
DCCERC, DCCPA,
DEAPA, OSSPA,

Originating Office: ORSI

PROGRAM OPERATIONS MANUAL SYSTEM
Part 01 -- Records Maintenance
Chapter 014 -- Furnishing Earnings Information
Subchapter 02 -- General Information Regarding Furnishing Earnings Record Information Under Agreements

New Material	No. of Pages	Discard	No. of Pages
Table of Contents (T01402.001-T01402.057)	1	Table of Contents (T01402.001-T01402.010) ...	1
RM T01402.050B. - RM T01402.057-7	62		

Background

This transmittal introduces guides and procedures for the reviews of assignment decisions that SSA is required to make under the Coal Industry Retiree Health Benefit Act (The Coal Act) of 1992. Under the Coal Act, an assigned operator (or related company) may request the miner's detailed earnings history and

the basis for the assignment. If an operator (or related company) disagrees with the assignment decision, it may then request review of the assignment decision and submit evidence which demonstrates the assignment is incorrect. SSA's review decisions are final. Since all of this material is new, the transmittal should be read carefully.

Some of the notices referred to in this transmittal have not yet been cleared and approved by the Notice Policy staff but will be added as exhibits in a later transmittal.

U.S. Department of Health and Human Services
Social Security Administration
Office of Policy
SSA PUB. No. 68-0101402
I.C.N. NONSTOCK

Effective Date: Upon Receipt

Selective Distribution
PSC

FURNISHING EARNINGS INFORMATION

Successor Company

A company is a *successor company* if it was a signatory to an UMWA coal wage agreement and either:

Expressly assumed health and death benefit obligations of retired persons last employed by the predecessor company by (for example):

- o payment of health care bills or death benefits; or
- o execution of a contract with a health carrier providing coverage for such persons; or

Implicitly assumed these obligations through promises of coverage or similar acts.

If no explicit or implicit assumption of obligations has occurred, then a company is a *successor company* if:

- o the new company has signed an UMWA wage agreement; and
- o a majority of the employees presently work-

ing for the successor company formerly worked for the predecessor company; and

- the location is the same geographical area and the work functions have continued relatively unchanged; and
- operations are/were not suspended for longer than six months (not counting a strike period); and

Successor (or Successors) in Interest	A *successor in interest* is one (or more) successive owners who follow another in ownership or control of property. In order to be a *successor in interest*, a party must continue to retain the same rights as the original owner. The term ordinarily indicates statutory succession as, for instance, when a corporation changes its name but retains the same property. As used in a statute affecting transfers of property with intent to defraud creditors and making such transfers void as against all creditors and their "successors in interest," the term also includes the assignees of such creditors.
Time of Determining the Relationships	*The time of determining relationships* between signatory tory operators, related persons and successors is July 20, 1992. In such a case, the relationship shall be determined as of the time immediately before the signatory operator ceased to be in business. Relationships that arise after July 20, 1992, cannot be considered for assign-

ment/reassignment purposes. (Also see RM T01402.002, "related company.")

COAL ACT FAX

Date : October 30, 1995

TO :

Don Buckley, NEPSC PHONE: (718) 557-3607 FAX: (718) 557-5014	Annette Lovett, SEPSC PHONE: (205) 801-2238 FAX: (205) 801-2262
Mark Rekoske, GLPSC PHONE: (312) 353-4274 FAX: (312) 353-0403	Shirley Murphy, WNPSC PHONE: (510) 970-1429 FAX: (510) 970-1424

FROM : Sam Washington, OPBP
PHONE: (410) 965-5042
FAX: (410) 966-9214

COVER +: 2

SUBJECT: Changes to Supplemental Coal Act Review Instructions #4

All six examples provided in Section G. of Sup #4 are intended to illustrate how to handle "alter ego" and "successor" relationship situations. However, Example 6, in Section B. of Sup #4, and the clarifications provided to NEPSC in my August 17, 1995 FAX are partially erroneous. Therefore, I have prepared two replacement pages for Sup #4 as follows:

Page 2: Explains the definition for "alter ego," and clarifies that the "alter ego" relationship involves the corporate "death" (at least in its original form) of the signatory operator which is then resurrected under a new corporate identity; and

Page 8: Changes Example 6 to (a) incorporate the "alter ego" clarification, and (b) include the

status of the non-mining operation which then explains its relationship to the mining operation and the signatory operator.

Attached are the two replacement pages. Please destroy the *original* July 1995 versions of these pages and insert these in their place.

If you have any questions or wish to discuss this further, please give me a call.

cc: Ernestine Durham, Edie Lee
Rich Harron, Mary Lea, Rodger Waldman

SSA-1826 ITEMIZED STATEMENT OF EARNINGS
VERSION 1984.002 * * * FOR SSN 404-28-4532 * * *

FROM: SOCIAL SECURITY ADMINISTRATION
OFFICE OF CENTRAL RECORDS OPERATIONS
BALTIMORE, MARYLAND 21235-0000

NUMBER HOLDER NAME:
JOHN R THOMAS

0- 0
PERIODS REQUESTED JANUARY 1946 TO DATE

YEAR	JAN - MARCH	APRIL -JUNE	JULY - SEPT	OCT - DEC	TOTAL
EMPLOYER NUMBER: 61-0217610					
HARLIN WALLINS COAL CORP					
HARLAN, KY 40831					
1946	631.25	330.57	598.40	497.30	$ 2,057.52
1947	880.31	859.18	724.63	535.88	$ 3,000.00
1948	743.42	802.54	1,271.65	182.39	$ 3,000.00
1949	725.06	883.43	282.14	548.11	$ 2,438.74
1950	794.95	1,080.32	1,030.94	93.79	$ 3,000.00
1951	877.46	994.09	745.04	1,187.99	$ 3,804.58
1952	1,091.89	1,127.56	841.61	538.94	$ 3,600.00
1953	517.83			352.40	$ 870.23
1954		8.33			$ 8.33
1955			1,276.64	1,280.49	$ 2,557.13
1956	836.83	1,280.59	512.51	1,031.30	$ 3,661.23
1957	910.85	1,270.27	1,504.93	513.95	$ 4,200.00
1958	517.83	75.00			$ 592.83
EMPLOYER NUMBER: 34-4205140					
CITY AUTO STAMPING CO DIV OF GLOBE					
WERNICKE INDUSTRIES INC					
LINT & DURA AVE					
TOLEDO, OH 43612					
1953	241.38	1,131.99	951.76	389.83	$ 2,714.96

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SSA-1826 ITEMIZED STATEMENT OF EARNINGS
VERSION 1984.002 * * * FOR SSN 404-28-4532 * * *

YEAR	JAN - MARCH	APRIL -JUNE	JULY - SEPT	OCT - DEC		TOTAL
EMPLOYER NUMBER: 62-0217610						
1953			8.33		$	8.33
EMPLOYER NUMBER: 61-0399162 STEVE MIDDLETON WILCAT BRANCH COAL CO 1 VERDA, KY 40872						
1954			425.20		$	425.20
1960				242.25	$	242.25
1961	489.22	637.06	717.39	481.00	$	2,324.67
1962	581.75	442.00	988.04	698.80	$	2,710.59
1963	456.57	1,165.27	513.76	1,015.65	$	3,151.25
1964	363.75	120.00			$	483.75
EMPLOYER NUMBER: 61-0339162						
1954				393.10	$	393.10
1955	466.00	452.00			$	918.00
EMPLOYER NUMBER: 61-0306570 D E PERKINS HARLAN, KY 40831						
1958		52.50			$	52.50
EMPLOYER NUMBER: 61-0510304 HARLAN EVERGLOW COALS INC THREE POINT, KY 40815						
1958			676.80	630.15	$	1,306.95
1959	620.40		70.00	1,035.46	$	1,725.86

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SSA-1826 ITEMIZED STATEMENT OF EARNINGS
VERSION 1984.002 * * * FOR SSN 404-28-4532 * * *

YEAR	JAN - MARCH	APRIL -JUNE	JULY - SEPT	OCT - DEC		TOTAL
1960	1,393.08	692.05	738.97	626.52	$	3,450.62
1961	54.00				$	54.00

EMPLOYER NUMBER: 61-0560972
DAVES BRANCH COAL CO INC
TA DAVES BRANCH COAL CO INC
LENARUE, KY 40818

1962				57.85	$	57.85

EMPLOYER NUMBER: 61-0588137
LITTLE KNOB COAL COMPANY
INCORPORATED
WOODLANDS HILLS
HARLAN, KY 40831

1962				125.20	$	125.20
1963	268.60				$	268.60

EMPLOYER NUMBER: 61-0606844
SHACKLEFORD COAL CO INC
KELLY & ASSOCIATES
SUCCESSOR IN INTEREST TO
PO BOX 797
HARLAN, KY 40831

1965	720.00	573.75	660.00	1,222.50	$	3,176.25
1966	587.50	1,205.00	600.00	1,162.50	$	3,555.00
1967	1,231.25	1,410.63	1,184.91	1,283.95	$	5,110.74
1968	1,219.32	1,380.00	1,029.00	1,389.57	$	5,017.89
1969	1,333.50	1,672.50	1,137.00	1,477.00	$	5,620.00
1970	1,329.25	1,453.50	78.00		$	2,860.75

OUR RECORDS MAY NOT SHOW ALL THE EARNINGS REPORTED FOR THE PERIODS ENDING AFTER DECEMBER 1991 BECAUSE OF THE TIME REQUIRED TO RECEIVE AND PROCESS REPORTS.

THERE ARE NO OTHER EARNINGS RECORDED UNDER THIS SOCIAL SECURITY NUMBER FOR THE PERIOD REQUESTED.

PAGE 003 END

[DATE AND TRANSMITTAL INFORMATION OMITTED]

TO : Southeastern Program Service Center
ATTN: Annette Lovette

SUBJECT: Successor Company and Signatory Date Issues in Jericol Mining, Inc., [REDACTED]

We have the following general comments:

- The basic criteria for determining when a company is a successor to another is discussed in our memorandum to NEPSC dated August 9, 1994 (attached). Ordinarily, the application of these criteria to the evidence presented by the assignee-appellant and other available SSA and UMWA Fund evidence should suffice in reaching the review decision. Bills of sale/transfer, incorporation, and similar business documents should be taken literally, so there ought to be little need for "interpreting" them. However, if such documents contain unfamiliar terms, refer to precedent law cases, or raise other issues—and these affect the review decision—you may submit them to us for advice.

- The Coal Act does not permit us to impute a related company's signatory status to that of the signatory operator; that is, a pre-1978 signatory cannot be treated as a 1978 (or later) signatory simply because its parent or "sister" company is a 1978 (or later) signatory. Section 9706(a) of the Coal Act makes it clear that assignments to 1978

signatories are made to "the most recent signatory operator *to employ* the coal industry retiree" (emphasis supplied). Nor does the definition of "signatory operator" in Section 9701(c)(1) include a "related person". Once a company is found to be a related company of an operator, only its active status is material–except in the uncommon case described in POMS RM T01402.003D when we can combine the miner's work periods for the signatory operator and the related company *if he worked for both.*

- In the case of a "successor" or "successor in interest", we may speak of them as "related" but, in fact, these entities are treated as continuing the predecessor business activities. That is, successors or successors in interest are treated for assignment purposes as if there had been no change of ownership. When the Hot List was created, SSA had very limited information about the type of relationship that existed between a signatory operator and its "related company". All that was known, generally, was that some type of relationship existed and, most probably these would prove to be parent-child or sister company relationships. Original assignments had to be based on these "best" assumptions. Now, as additional evidence of company relationships is becoming available during the administrative review process, it appears that this assumption was correct but that some relationships actually involve successors or even just name changes for the signatory operator. Such new evidence may well lead to reversal of

some assignment decisions, but this was expected to be the case.

We have these specific comments:

- *Jericol Mining*—In this case, *Jericol (formerly Irdell Mining, Inc.)* was assigned as the successor to *Shackleford Coal Company*. The assignee has submitted a copy of its purchase agreement with *Shackleford* from 1973. The review is based upon a claim that not all of *Shackleford's* assets were purchased but that some were purchased by *Dale Company*; other allegations about the nature of the purchase clearly contradict the plain wording of the purchase agreement. Evidence in file shows *Jericol* adopted use of the *Shackleford* name, continued operations under *Shackleford's* UMWA agreement, and met other criteria tending to show it is the successor. We agree with your analysis of the evidence and your conclusion that *Jericol* is in fact the successor to *Shackleford.*

The assignee referred to the precedent case of *Cox v. Feeders Supply Company* in support of its review request. We have reviewed the case and found it was decided "under the facts of this case" which are so different that it would not support the assignee's appeal.

REDACTED MATERIAL OMITTED

If you need to discuss this, you may call me on (410)-965-7887.

/s/ RAY WORLEY
RAY WORLEY

Attachment
cc: NEPSC
GTLPSC
WNPSC

bcc: Sam Washington

Final:RWorley:vdobbins:8/18/94
wp:RAY:se-misc.epa

AUG 09 1994
ER 20-2

TO : Northeastern Program Service Center
ATTN: Jim Downey

SUBJECT: Transfer of Business and Successor Issues under the Coal Act, [MATERIAL REDACTED] REPLY

We have the following general comments:

- The basic criteria for determining whether a business transfer was made to a successor or some other party [MAERIAL REDACTED] material is: when a transfer is made to another owner who continues the former owner's operation with little or no interruption or change, the new owner is a successor.

- The decision as to whether a transfer was to a successor or another is often a difficult matter of judgement. Most business transfers have common elements that do not clearly identify successors from others; such elements include:

  —Sale of the owner's operating equipment and sale or lease of land used in the former operation;

  —"Hold harmless" agreements that exempt the buyer from liabilities incurred by the former owner prior to the transfer;

  —Obligation of former owner to continue operations between the transfer agreement date and final closing of the transfer; and

  —Completion by the buyer of any contracts of the former owner that are still pending at final closing of the transfer.

- The elements that tend to support a finding that a business transfer was to a successor are these:

  —Employees of the former owner continue to work for the new owner with little or no interruption after the transfer. Where the former owner's operations were covered by a UMWA wage agreement, UMWA Fund records may show work continued for the new owner at the same mine after the transfer. In other cases, scouting to SSA's earnings records will show whether most of the former owner's employees continued to work for the new owner after the transfer;

  —The former owner transferred the business trade name to the new owner. This is often evidenced by the former owner agreeing to file of "cancellation of fictitious name" with the State corporation registration agency, so the new owner can use the same company name. In some cases, the new owner may adopt a name similar to the former owner's business name;

—The former owner agrees not to compete with the new owner's business, or not to compete in the same geographical area;

—The transfer includes sale of "good will" reputation with customers and others), or the turning over of customer records, business records, contracts, leases, and the like;

—The prior owner agrees to work for the new owner as a consultant or employee;

—The transfer changes ownership of a whole subsidiary or division previously owned by the transferring corporation; or

—The transfer is between related persons in a family business or the new owner was an employee of the former business.

[MATERIAL REDACTED]

FAXED TO ALL PSCs 8/10/94